

PUBLIC HEARING  
COMMISSION ON STATE MANDATES

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TIME: 9:30 a.m.  
DATE: Thursday, April 25, 2002  
PLACE: State Capitol, Room 126  
Sacramento, California

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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A P P E A R A N C E S

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ANNETTE PORINI, Chair  
Representative for B. TIMOTHY GAGE, Director  
State Department of Finance

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Acting Director of Office Planning and Research

WILLIAM SHERWOOD  
Representative for PHILIP ANGELIDES  
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JOANN STEINMEIER  
School Board Member  
Arcadia Unified School District

JOHN R. HARRIGAN  
Chief Deputy State Controller, Administration  
Representative for KATHLEEN CONNELL, State Controller

SHERRY WILLIAMS  
Senior Legislative Analyst  
Office of Governor Gray Davis Planning and Research  
Representative for TAL FINNEY, Interim Director

COMMISSION STAFF PRESENT

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PAUL M. STARKEY, Chief Legal Counsel

ELLEN FISHMAN, Commission Counsel

KATHERINE TOKARSKI, Staff Counsel

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PUBLIC TESTIMONY

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1           BE IT REMEMBERED that on Thursday, the 25th day of  
2 April, 2002 commencing at the hour of 9:30 a.m., thereof,  
3 at the California State Capitol, Room 126, Sacramento,  
4 California, before me, Stacey L. Heffernan, a Certified  
5 Shorthand Reporter in and for the State of California, the  
6 following proceedings were had:

7                               ---oOo---

8           CHAIRPERSON PORINI: I'll go ahead and call to  
9 order the meeting of the Commission on State Mandates.

10           May I have role call.

11           MS. HIGASHI: Mr. Harrigan?

12           MR. HARRIGAN: Here.

13           MS. HIGASHI: Mr. Lazar?

14           MR. LAZAR: Here.

15           MS. HIGASHI: Mr. Sherwood?

16           MR. SHERWOOD: Here.

17           MS. HIGASHI: Ms. Steinmeier?

18           MS. STEINMEIER: Here.

19           MS. HIGASHI: Ms. Williams?

20           MS. WILLIAMS: Here.

21           MS. HIGASHI: Ms. Porini?

22           CHAIRPERSON PORINI: Here.

23           Okay. We're all here.

24           MS. HIGASHI: Yes.

25           The first item is approval of the minutes for the

1 March 28th meeting.

2 MR. HARRIGAN: I'll move.

3 MR. SHERWOOD: Second.

4 CHAIRPERSON PORINI: Any further discussions,  
5 changes, questions, comments?

6 (No response.)

7 CHAIRPERSON PORINI: Okay. We have a motion and a  
8 second.

9 All those in favor indicate with "aye."  
10 (Whereupon the Commission members replied  
11 unanimously with aye.)

12 CHAIRPERSON PORINI: Opposed?

13 (No response.)

14 CHAIRPERSON PORINI: That carries.

15 MS. HIGASHI: Ms. Porini, should I do --

16 CHAIRPERSON PORINI: Let's --

17 MS. HIGASHI: -- and abstentions in the minutes,  
18 since you weren't here?

19 CHAIRPERSON PORINI: Okay. Please do.

20 MS. HIGASHI: For this hearing, there is no  
21 consent calendar.

22 This will take us to the hearing portion of our  
23 meeting. And, since we have two items being presented that  
24 we'll have public testimony and witnesses, at this time I'd  
25 like for all of the witnesses and representatives who will



1 be coming before the Commission to please stand, raise one  
2 of their hands.

3 Do you solemnly swear or affirm that the testimony  
4 which you are about to give is true and correct and based  
5 upon your personal knowledge, information or belief?

6 (Whereupon the witnesses replied "I do" en masse.)

7 MS. HIGASHI: Thank you.

8 MR. SHERWOOD: We have three items, don't we,  
9 today, Paula?

10 MS. HIGASHI: Yes, but this is the first item.

11 MR. SHERWOOD: Okay. But we'll have three?

12 MS. HIGASHI: We have two items that require  
13 witnesses to be sworn.

14 MR. SHERWOOD: And the third we don't --

15 MS. HIGASHI: Because they're P's and G's.

16 MR. SHERWOOD: Okay.

17 CHAIRPERSON PORINI: Okay. Our first test claim.

18 MS. HIGASHI: Our first test claim is "Pupil  
19 Promotion and Retention," and this test claim will be  
20 represented by Katherine Tokarski, staff counsel.

21 MS. TOKARSKI: "Claimant, San Diego Unified School  
22 District, submitted a test claim" --

23 CHAIRPERSON PORINI: Katherine, let's wait just a  
24 minute. Let the folks get up here.

25 MS. TOKARSKI: Oh, I'm sorry.

1           CHAIRPERSON PORINI:  You're just ready to go.

2           Okay.

3           MS. TOKARSKI:  "Claimant, San Diego Unified School  
4 District, submitted a test claim alleging a reimbursable  
5 state mandated program for school districts, for the first  
6 time, to adopt and implement policies regarding the  
7 promotion and retention of pupils between specified grade  
8 levels.  The test claim allegations also claim a  
9 reimbursable state mandated program for school districts to  
10 offer supplemental instruction to students who have been  
11 retained pursuant to those promotion and retention  
12 policies, and to offer mandatory summer school to those  
13 students identified as not meeting the district's adopted  
14 proficiency standards.  Claimant concludes that none of the  
15 Government Code section 17556 exceptions to finding costs  
16 mandated by the state applies to this test claim.  To the  
17 extent that any funds were appropriated for the test claim  
18 legislation, claimant certifies that these funds are  
19 insufficient to fund the mandate.

20           "Staff finds that activities associated with  
21 school district pupil promotion and retention policies and  
22 supplemental instruction constitutes a program pursuant to  
23 article XIII B, section 6 of the California Constitution by  
24 requiring new activities or tasks of school districts  
25 offering public education.  In addition, much of the test

1 claim legislation requires a school district to engage in  
2 new activities or higher levels of service when compared to  
3 prior law.

4           "Reimbursement for any new activities is required  
5 only if the activities impose 'costs mandated by the  
6 state.' Department of Finance maintains that for much of  
7 the test claim legislation there are no costs mandated by  
8 the state because funding was provided in the budget.  
9 Although districts have received funds for supplemental  
10 education, funding from another source does not preclude a  
11 finding of a reimbursable state mandated program if the  
12 funds were not appropriated as part of the test claim  
13 legislation and 'sufficient to fund the cost of the state  
14 mandate.' However those funds must be used to offset any  
15 costs incurred from the mandated activities. When  
16 preparing parameters and guidelines, 'All proposed  
17 parameters and guidelines must allow for an offset of any  
18 other reimbursement received from the federal or state  
19 governments.'

20           "Therefore, staff concludes that Education Code  
21 sections 37252, 37252.5, 48070 and 48070.5 require new  
22 activities, as specified, resulting in a reimbursable state  
23 mandated program. Accordingly, staff recommends that the  
24 Commission approve this test claim for the activities  
25 specified, beginning on page 19 of the final staff

1 analysis."

2 Will the parties and representatives please state

3 your name for the record.

4 MR. PALKOWITZ: Good morning. Art Palkowitz on

5 behalf of the claimant, San Diego Unified School District.

6 MS. BERG: Carol Berg, Education Mandated Cost

7 Network.

8 MR. DE LA GUARDIA: Ramon de la Guardia, Deputy

9 Attorney General representing the Department of Finance.

10 MR. AGUILERA: Matt Aguilera, Department of

11 Finance.

12 CHAIRPERSON PORINI: All right.

13 Would you like to open Ms. Berg?

14 MS. BERG: Well, I would like to begin by saying,

15 first of all, we thank staff for the work that they have

16 done on this one. I believe this is a bit of a

17 record-setting case in that we moved it pretty quickly

18 forward, which meets one of the issues that was raised in

19 another activity involving this Commission and staff, but

20 we thank the staff very much for the process and the speed

21 with which this has come forward to you, and, as a

22 representative of the Education Mandated Cost Network, we

23 support the recommendations and urge your aye vote.

24 Thank you.

25 CHAIRPERSON PORINI: All right. Mr. Palkowitz.

1 MR. PALKOWITZ: Yes. Thank you.

2 The claimant feels this test claim is very  
3 important for the students of California as it addresses  
4 the academic deficiencies of every pupil. The claimant  
5 would also like to thank the staff for its analysis. We  
6 would consent to the analysis and reserve our right to  
7 respond to any comments by the Department of Finance or  
8 anyone else.

9 CHAIRPERSON PORINI: Okay.

10 Mr. de la Guardia.

11 MR. DE LA GUARDIA: Thank you.

12 Department of Finance also appreciates the hard  
13 work that staff put in in analyzing this legislation and  
14 the quality of their analysis, however we do have some  
15 disagreements and some of these are substantive and some of  
16 these are procedural, one is: We feel that staff's  
17 interpretation of the exemption for accompanying funds,  
18 offsetting funds, is too literal that the legislation --  
19 the actual statute has to contain the offsetting funds.

20 The presumption in California is that  
21 appropriations will be made in the budget itself or, in  
22 case of education, also through Education Code 44239(e) or  
23 (1), I believe. And, in this case, it's -- there's no  
24 dispute that there was funding for these programs, and  
25 we've presented evidence showing that not all of the funds

1 available were claimed. I mean, we feel this creates a  
2 presumption that there was sufficient funding.

3           The Department of Finance works closely during the  
4 budget process when they, in this particular -- in the main  
5 programs, the Pupil Summer School Programs and the  
6 Supplemental Educational Programs, they develop a rate in  
7 consultation with all the affected parties, and they're  
8 usually assured that that rate is sufficient to cover the  
9 costs of the mandate, and that's why it's surprising that  
10 the amount of funds available were not sufficient.

11           And part of the problem is in the nature of the  
12 claim, and this was a matter of notice, I guess, to the  
13 Department of Finance. All we have is a claim that costs  
14 were in excess of \$200. We have a series of activities,  
15 some of which began in 1983, and were one-time activities  
16 in 1983. We don't know if they're claiming for that.

17           Staff has concluded that the earliest period for  
18 reimbursement would be fiscal year 1997, so we have quite a  
19 bit of -- quite a gap there between 1983 to 1997, and we  
20 seriously doubt that the one-time activity, which was  
21 developing a pupil retention policy in 1983, could have  
22 occurred in 1997 onward, yet we have this record that says  
23 that it's a reimbursable mandate.

24           We feel that the exemption in subdivision (e) of  
25 17556 was created to avoid this kind of situation and that

1 the parameters and guidelines procedure could ultimately be  
2 an unnecessary expenditure of staff resources and is really  
3 unwarranted, if the Commission would require more specific  
4 claims from claimants in this situation where we know there  
5 is funding and we know that there is a limited period for  
6 the time.

7 And, under the major claim, staff has concluded  
8 that the claims only run for two and a half years, from  
9 1997 to 2000, so I think that there is a manageable period  
10 of time in which to plead or detail the claims. And this  
11 is really more of a -- not an ongoing thing, because there  
12 could be a new claim for a new statute, but we really do  
13 have this finite period here, so we feel that the  
14 Commission should require more specificity from the  
15 claimant, in this case, and it should revisit the issue of  
16 the exemption for accompanying funds for a mandate.

17 Mr. Aguilera?

18 MR. AGUILERA: I don't have anything to add to  
19 that, other than we support the comments just made for the  
20 record.

21 CHAIRPERSON PORINI: All right.

22 Questions from members?

23 Yes, Ms. Steinmeier.

24 MS. STEINMEIER: On this issue of this gap between  
25 the 1993 original policy dates and the 1997 starting date

1 of this statute, would either the claimant representatives  
2 like to comment on that, that piece of Mr. de la Guardia's  
3 testimony?

4 MR. PALKOWITZ: I think he was mentioning 1983?

5 MS. STEINMEIER: Um-hum.

6 MR. PALKOWITZ: Okay. Yes.

7 It's our position the claim period doesn't start  
8 until 1997, the time of the statute. This test claim, as  
9 mentioned by staff and as we commented, commences in 1997.  
10 There was no appropriation allocation in the test claim.  
11 It was done at some other point. We don't know if that  
12 will ever be done again; there's no assurance. And it's  
13 really an issue that is to be dealt with in the parameters  
14 and guidelines, if they're -- clearly, there was some  
15 funding and, clearly, there should be a setoff, but that  
16 does not affect the ability for this staff Commission to  
17 rule that there is a test claim.

18 MS. STEINMEIER: I agree there's a threshold  
19 question: Did the law actually create a new program or  
20 higher level of service, and, then, the next question is:  
21 What offsetting funding was there, both/either state or  
22 federal? And I believe some school districts use federal  
23 money for some of the remediation, not just state money.

24 On the issue of summer school or on other -- did  
25 you mention summer school, specifically, or were you just



1 talking about state funding, Mr. de la Guardia?

2 MR. DE LA GUARDIA: Summer school.

3 MS. STEINMEIER: Summer school?

4 MR. DE LA GUARDIA: Yes.

5 MS. STEINMEIER: Um --

6 MR. DE LA GUARDIA: Mandatory summer school, yeah.

7 MS. STEINMEIER: Mandatory summer school.

8 In your comments that are in our binder, you

9 talked about there not being a cap on summer school

10 funding; I believe there is a cap.

11 MS. BERG: There is a cap.

12 MS. STEINMEIER: And it usually is -- for some

13 districts, it's sufficient and, for other districts, it's

14 not sufficient to do what we're being asked to do here.

15 MR. DE LA GUARDIA: There is a cap during part of

16 the test claim period, but, in January of 2000, the cap was

17 removed, and that's, I think, one of the reasons why staff

18 decided that, um -- to limit the test claim to that period.

19 Mr. Aguilera, do you have --

20 MS. STEINMEIER: Right, because after 2000, it's

21 not a problem is what you're saying?

22 MR. DE LA GUARDIA: Yes.

23 CHAIRPERSON PORINI: Did you want to comment

24 further, Finance?

25 MR. AGUILERA: No.

1           CHAIRPERSON PORINI:  Anyone else?

2           (No response.)

3           MS. STEINMEIER:  Those are my only questions right

4 now.

5           CHAIRPERSON PORINI:  Okay.

6           Other questions?

7           Mr. Harrigan.

8           MR. HARRIGAN:  I believe this came from the

9 question from the state, from the attorney general, that

10 not all of the funds were claimed during this time period.

11           MR. DE LA GUARDIA:  That's what our records at

12 Department of Education show.

13           MR. AGUILERA:  That is correct.  Moreover, the

14 state has a process that in the event that the funds

15 provided in the budget are insufficient the Department of

16 Education can request a deficiency, and so that allows the

17 state policy makers to try to find a fund source to provide

18 resources for instructional hours provided.

19           CHAIRPERSON PORINI:  Did that answer your

20 question?

21           MR. HARRIGAN:  Well, the claimant, do you have a

22 response to that?

23           MR. PALKOWITZ:  Sure.  I have no knowledge of

24 what other districts claim throughout the state; I have

25 knowledge of what our district claim, and it's

1 insufficient, the funding we received, but, once again, I  
2 really think that deals with the parameters and guidelines  
3 where if a district does not incur any expenses they won't  
4 be making a claim, but, for the districts that did incur an  
5 expense, they have to make -- they are entitled to make a  
6 claim. And, if they did not receive enough funding,  
7 they're entitled to get paid the excess amount.

8 CHAIRPERSON PORINI: Yes, Ms. Berg.

9 MR. AGUILERA: If I may respond to that?

10 CHAIRPERSON PORINI: Let's have Matt rebut  
11 that and then go to Ms. Berg.

12 MR. AGUILERA: Okay.

13 And, to date, we don't have any records indicating  
14 that there were claims in excess of the funds that were  
15 provided.

16 CHAIRPERSON PORINI: So even from San Diego you  
17 have -- there's no deficiency that has been filed on behalf  
18 of San Diego; is that what you're saying?

19 MR. AGUILERA: That's our understanding.

20 CHAIRPERSON PORINI: Okay. Ms. Berg.

21 MS. BERG: And the reason for that, Ms. Chairman  
22 and Mr. Harrigan, is that there is no mechanism. The funds  
23 were allocated as part of the statute. This is the process  
24 by which one comes back and says there wasn't enough  
25 money. There is no process in place for you to go to the

1 Department of Ed. and say, "In that line item, there's  
2 still money there and here's -- we didn't get enough."  
3 There is no provision for that under current -- I need to  
4 be careful -- in this period of time.

5 CHAIRPERSON PORINI: Okay. Comment from Finance?

6 MR. DE LA GUARDIA: I just think, though, that,  
7 as far as the claimant, San Diego, they did not claim all  
8 of the funds available to them, and that sort of highlights  
9 the problem.

10 We have various programs which are related to  
11 pupil retention, but we don't know if they're -- you  
12 know, as far as the summer school remedial education,  
13 there's funds available.

14 Are they claiming something, other ancillary  
15 thing? We don't know. And that's -- that highlights the  
16 problem with the nature of their claim. If they could be  
17 more specific, then maybe we could narrow down the issues  
18 in this.

19 MR. PALKOWITZ: If I may respond to that?

20 CHAIRPERSON PORINI: Mr. Palkowitz.

21 MR. PALKOWITZ: Statutes that are involved in this  
22 test claim state that a district shall invoke a new policy,  
23 a district shall give remedial instruction, a district must  
24 provide instruction to people who are retained or  
25 identified as retained.

1           You know, this issue regarding the funding is  
2 really not what's the focus here. That is a focus for  
3 parameters and guidelines in this mandated process. And  
4 those things, I think, are really appropriately done in  
5 that stage, once this test claim is approved. And, if we  
6 didn't claim adequate funding or we did or there isn't, you  
7 know, that is not going to defeat the ability for this  
8 Commission to vote that this is a test claim.

9           CHAIRPERSON PORINI: All right.

10          Ms. Steinmeier.

11          MS. STEINMEIER: The other thing that occurred to  
12 me, John, when you're asking the question about why all the  
13 funds weren't used, the districts are so different. There  
14 can be some districts in the state who had enough summer  
15 school money in that window to supply their need, and there  
16 could be others that, frankly, just were grasping, trying  
17 to figure out how to do this.

18          And summer school is not the only way. In fact,  
19 many districts who do it along the way do it before or  
20 after school, Saturday school, something like like, instead  
21 of waiting to fail at the end of the semester or year and  
22 then take the class all over again in six weeks in the  
23 summer and probably fail again. That's probably not a good  
24 model. It's probably better to help them as they go. So  
25 that's a different part of this. But summer school money by

1   itself, I know, from many districts, is a frustration.  If  
2   they have a lot of remedial need, there was a cap.

3           And Carol is right:  There's no way for a district  
4   to apply to the state and say, "This year we need more  
5   money for summer school."  It just doesn't happen.  You  
6   have to live within your cap, and then you do triage.  You  
7   take the kids who need the most help and you put them in  
8   summer school, and, the rest of them, you have to find  
9   another way to serve them.  So, as a practical matter, the  
10  whole funds -- all the funds were not used.  It may not be  
11  that some districts got enough.  It may or may not be.  I  
12  don't think that proves anything.

13           And back to the threshold question we have to  
14  decide:  Did the statute specifically mandate new or higher  
15  levels of service on school districts?  And then we figure  
16  out:  Are there enough offsets?  Some of them aren't  
17  getting any money and some may.  I think that's the  
18  process.

19           So this, right now, is sort of a red herring, at  
20  this point.  It's something we need to talk about, though,  
21  in the process, and that's why I'm glad that Katherine  
22  inserted that.  We have to look at that offset issue, but  
23  let's take one question at a time.  Question One is:  What  
24  did the statute say?  That's the way I would like to  
25  proceed.

1 MR. HARRIGAN: So if the test claim --

2 CHAIRPERSON PORINI: Mr. Harrigan.

3 MS. HARRIGAN: So if we accept the staff's

4 recommendations and we go to parameters and guidelines to

5 work out the specifics on the funding issues and what the

6 alternatives are --

7 MS. STEINMEIER: Correct.

8 MR. HARRIGAN: -- if we deny it, then the claimant

9 has whatever other recourse?

10 MS. STEINMEIER: Right.

11 MR. HARRIGAN: Okay.

12 CHAIRPERSON PORINI: Other questions or comments?

13 Mr. Palkowitz.

14 MR. PALKOWITZ: Thank you.

15 It's not only what has happened up to date, it's

16 also what happens in the future, so we don't know what the

17 funding there may or may not be in the future, and that's

18 another issue that, obviously, is part of the test claim

19 process.

20 CHAIRPERSON PORINI: And, just for clarification,

21 the funding in the future is from the state budget process;

22 it is not related, specifically, to the test claim

23 legislation.

24 MR. PALKOWITZ: Correct.

25 MS. BERG: Exactly.

1           MR. PALKOWITZ: And that's really the issue.

2           MR. DE LA GUARDIA: But I think the staff has  
3 limited the remedial education only to January of 2000, so  
4 this will not involve the future. I think we're only  
5 concerned between July of '97 and January of 2000. And  
6 I'll defer to Ms. Tokarski, but that's my reading of her --

7           MS. TOKARSKI: That's true for the summer school  
8 program of -- excuse me one moment -- for Education Code  
9 section 37252. That code section was substantially amended  
10 both the way the program was structured, the way the  
11 funding was structured, operative January 1st, 2000. So  
12 the reimbursement period for that program, which is for  
13 grade seven through twelve for students not meeting the  
14 adopted standards of proficiency, is limited to the  
15 beginning of the reimbursement period, July 1st, 1997 to  
16 December 31st, 1999, basically.

17           The operative period of that statute -- the  
18 statute was so substantially amended, and that's not part  
19 of this test claim, that it would not continue at this  
20 point, but there's a second part, a second statute, in the  
21 test claim, which is 37252.5, which is a different program  
22 for supplemental instruction for students who have been  
23 retained, and that's for students in grades two through  
24 nine, and that, as of the last time I looked at the  
25 statute, is ongoing. So that one is not limited.



1           MS. BERG: And that's an uncapped program and it's  
2 funded in the budget.

3           MR. DE LA GUARDIA: I believe in footnote 20 you  
4 indicated that it is only through January of 2000.

5           CHAIRPERSON PORINI: Ms. Steinmeier.

6           MS. STEINMEIER: I'm going to play devil's  
7 advocate here.

8           MS. TOKARSKI: It's from a different code section.

9           MS. STEINMEIER: Let me play devil's advocate for  
10 a minute. Let's say in this year's tumultuous budget the  
11 Legislature -- there's talk about suspending Proposition  
12 98, which is the portion of the budget that funds public  
13 education.

14           What if, in that process, the Legislature decides  
15 to deemphasize this program and either cuts back the  
16 funding or even changes the statute, do they have to bring  
17 back another test claim or could we -- or could the  
18 Controller, then, analyze it based on whatever offsets that  
19 are there or not there?

20           CHAIRPERSON PORINI: Katherine?

21           MS. TOKARSKI: If the statute is substantially  
22 amended so that the activities that the school district is  
23 providing are different, then I would think that a P's and  
24 G's amendment, at that point, would be in order to either  
25 delete the program and have a -- a new test claim must be

1 filed.

2           If the activities that are in the new statute are  
3 the same as the activities performed before, that's what's  
4 different, then -- you know, assuming it's approved today  
5 and it goes through the P's and G's process at a later  
6 date, just like with any test claim statute that's amended  
7 at a later date, if it's gotten past the claiming  
8 instruction process and districts or cities or counties are  
9 claiming on that particular item and suddenly it's changed  
10 or removed as a mandate, then we would have to change it in  
11 that stage.

12           But I think the problem here, with the way the  
13 funding is structured, is that it's not part of the  
14 legislation. So the funding could be cut off tomorrow but  
15 the mandate is still on the books, and the districts are  
16 still required to provide that level of supplemental  
17 instruction. If the mandate is approved today and -- then  
18 the districts will continue to have a mechanism for  
19 claiming funding for including those activities.

20           MS. STEINMEIER: The worst thing that could happen  
21 is the statute remains, the funding goes away. And, since  
22 they're not directly linked --

23           MS. TOKARSKI: Exactly.

24           MS. STEINMEIER: -- that could actually happen in  
25 the budget process, the mandate be maintained and the

1 budget either reduced or eliminated. I guess that's my  
2 question.

3 So, as long as the mandate has not been  
4 substantially amended, there's no reason they would  
5 continue to claim and not show as much offset --

6 MS. TOKARSKI: That's correct.

7 MS. STEINMEIER: -- that would be what would  
8 happen.

9 Thank you.

10 CHAIRPERSON PORINI: Mr. Aguilera.

11 MR. AGUILERA: I think the question is  
12 speculative. Typically, the state looks at those types of  
13 issues when decisions are made through the budget. In the  
14 event that the state didn't have funding, we'd be looking  
15 at the statutes to make sure that there is a resource to  
16 meet the state's obligations. You know, if the funding  
17 goes away, typically we would waive the program  
18 requirements that go along with that, or at least that  
19 would be taken into consideration when those policy  
20 decisions are being made.

21 CHAIRPERSON PORINI: Okay. Further questions?

22 (No response.)

23 CHAIRPERSON PORINI: Do I have a motion?

24 MS. STEINMEIER: Move for staff analysis --

25 THE REPORTER: I'm sorry. Could you --

1 MS. STEINMEIER: Move the staff analysis and the  
2 funding mandates.  
3 MR. LAZAR: (Mr. Lazar nods his head.)  
4 CHAIRPERSON PORINI: All right. We have a motion  
5 by Ms. Steinmeier, seconded by Mr. Lazar.  
6 Is there further discussion?  
7 (No response.)  
8 CHAIRPERSON PORINI: Okay. Roll call.  
9 MS. HIGASHI: Mr. Harrigan?  
10 MR. HARRIGAN: Aye.  
11 MS. HIGASHI: Mr. Lazar?  
12 MR. LAZAR: Aye.  
13 MS. HIGASHI: Mr. Sherwood?  
14 MR. SHERWOOD: Aye.  
15 MS. HIGASHI: Ms. Steinmeier?  
16 MS. STEINMEIER: Aye.  
17 MS. HIGASHI: Ms. Williams?  
18 MS. WILLIAMS: Aye.  
19 MS. HIGASHI: Ms. Porini?  
20 CHAIRPERSON PORINI: No.  
21 MS. HIGASHI: Motion carries.  
22 CHAIRPERSON PORINI: All right. Thank you very  
23 much.  
24 MS. BERG: Thank you very much.  
25 CHAIRPERSON PORINI: We're taking a little break

1 for a second. Mr. Lazar had to take a break, and we'll be  
2 right back, so we'll take a little break.

3 (Whereupon a break was taken.)

4 MS. HIGASHI: Item 3 is "Investment Reports,  
5 Incorrect Reduction Claim." This item will be presented by  
6 Ellen Fishman, staff counsel, and with Ellen today is  
7 Conny Jamison. She is an expert consultant for the  
8 Commission.

9 CHAIRPERSON PORINI: Please begin.

10 MS. FISHMAN: Thank you. Good morning.

11 "The County of Los Angeles filed this incorrect  
12 reduction claim after the State Controller's Office reduced  
13 its reimbursement claim for 1996-1997 from \$308,252 to  
14 \$6,502 and its claim for 1997-1998 from \$327,512 to \$325.

15 "The State Controller's Office reduced all claimed  
16 costs associated with daily/monthly accounting activities  
17 and all costs associated with computer software. The SCO  
18 asserts that it adjusted the claimant's reimbursement  
19 claims based on the Commission's Statement of Decision and  
20 Parameters and Guidelines. The SCO noted on the  
21 reimbursement claims that," quote, "'daily/monthly  
22 accounting duties are not mandated. Only the quarterly  
23 report of investments is mandated for the incremental cost  
24 of preparing this report,'" end quote.

25 "Claimant contends that the costs claimed are

1 necessary to produce the quarterly report of investments  
2 required by Government Code section 53646.

3 "There are four key issues for consideration by  
4 the Commission in determining whether the SCO incorrectly  
5 reduced this claim.

6 "1. Is the SCO's reduction of staff time to eight  
7 hours per quarter to accumulate and compile the data  
8 necessary to prepare and render the quarterly report of  
9 investments correct?

10 "In agreement with the Commission's Expert  
11 Consultant, staff finds that the reduction of staff time to  
12 prepare the quarterly report and provide the assurances  
13 required by section 53646 is neither correct nor reasonable  
14 given the size and complexity of Claimant's investment  
15 pool.

16 "2. If the challenged activities are mandated,  
17 are they reimbursable within the meaning of the test claim  
18 statute, the Commission's Statement of Decision and  
19 Parameters and Guidelines and the SCO's Claiming  
20 Instructions?

21 "In agreement with the Commission's Expert  
22 Consultant, staff finds that the challenged activities,  
23 including the use of subsidiary ledgers are reimbursable to  
24 the extent documented by Claimant as necessary to produce  
25 the quarterly report of investments. These reimbursements

1 are limited, however, to the activities required to produce  
2 the quarterly report four times a year.

3 "3. If the challenged activities are derived from  
4 the Treasurer's common law fiduciary duty, preexisting law  
5 and preexisting business concerns, are they reimbursable?

6 "Staff finds that the Legislature enacted an  
7 extensive statutory scheme to provide the requisite  
8 protections for county investments not found in the common  
9 law fiduciary duty as set forth, or in Probate Code section  
10 16040(b). Staff also finds that the challenged activities  
11 of entering and managing data to be included in the  
12 quarterly report of investments mandated by section 53646  
13 are not activities required by the common law fiduciary  
14 duty but new activities under the test claim legislation  
15 and, therefore, reimbursable. Further, staff reviewed all  
16 of the statutes cited by the SCO and found that none of  
17 them addressed the specific requirements of the quarterly  
18 report of investments. Therefore, they are not relevant.

19 "Finally, neither the Constitution nor statutes  
20 discuss 'business concerns' as a standard for denying  
21 reimbursement to local governments for costs incurred to  
22 implement a new program. Staff finds that even if the  
23 challenged activities also relate to business concerns,  
24 they are reimbursable activities under this mandate.

25 And, lastly: "Is the use of investment software

1 reimbursable?

2                "In agreement with the Commission's Expert  
3 Consultant, staff finds that the use of investment  
4 software, consistent with the Parameters and Guidelines  
5 reimbursement for '. . . costs for materials, service and  
6 supplies. . . ' is a reasonable method of complying with  
7 this mandate. Therefore, to the extent that the investment  
8 (ADS) software expenses and pricing service costs are  
9 directly related to the production of the quarterly  
10 investment reports, the use of investment software is  
11 reimbursable.

12                "Staff recommends that the Commission adopt the  
13 Staff Analysis, approve this Incorrect Reduction Claim, and  
14 request the State Controller to reinstate all costs that  
15 were incorrectly reduced."

16                Will the parties and witnesses please state your  
17 names for the record.

18                MR. KAYE: Leonard Kaye, County of Los Angeles.

19                MR. RIEGER: Chris Rieger, L.A. County Treasurer's  
20 Office.

21                MS. RUIZ: Susanna Ruiz, L.A. County Treasurer's  
22 Office.

23                MR. ROGERS: Greg Rogers, Department of Finance.

24                MR. SILVA: Shawn Silva, State Controller's  
25 Office.



1           CHAIRPERSON PORINI: All right. Mr. Kaye, would  
2 you like to begin?

3           MR. KAYE: Thank you.

4           I'd like to say, Ms. Fishman, I think you did an  
5 outstanding job in summarizing this very complex area of  
6 the law, and, also, it's an area of the law that really  
7 requires a very detailed understanding as to how the  
8 treasurers operate to prepare these investment tax reports,  
9 and we certainly concur not only with the -- your  
10 conclusion, your recommendation and your analysis, and,  
11 most particularly, we think that Conny Jamison, as an  
12 independent outside consultant who has specific hands-on  
13 expertise in this matter, is exceptionally invaluable in  
14 providing the evidence that this Commission needs to reach,  
15 I think, a just conclusion. One of our -- so we would  
16 support, in every way, the Commission staff and their  
17 recommendation before you today and urge your adoption of  
18 their decision -- of their recommendation.

19           We do have some small concerns. As you probably  
20 are aware, there are differences among folks, in terms of  
21 some of the issues and areas. And one small concern that  
22 we don't feel has, in any way, roadblocked your adoption  
23 today is a slight difference of opinion regarding the  
24 point-in-time concept.

25           We think that it is clear to us, and we feel that

1 it was part of the legislative mandate, that we don't  
2 merely observe compliance on the last date that the report  
3 was issued but it is a summary of transactions of  
4 compliance for all transactions during the entire report  
5 period. So we would emphasize that feature a little bit  
6 more. But, other than that, we are in general agreement  
7 with the recommendation before you today.

8 Thank you.

9 CHAIRPERSON PORINI: Okay.

10 Mr. Rogers.

11 MR. ROGERS: In reviewing this, I guess, for the  
12 most part, we have no concerns with the staff  
13 recommendation; however, I'd just like to point out, the  
14 daily activities, we're kind of concerned there a little  
15 bit. I think we agree more than the Controller's Office on  
16 that issue, but we do agree that you do need subsidiary  
17 ledgers to produce this type of quarterly report.

18 CHAIRPERSON PORINI: Okay.

19 Mr. Silva.

20 MR. SILVA: We have, in the Controller's Office,  
21 two major concerns with the staff analysis, the foremost  
22 being the emphasis and the focus of the report of the  
23 analysis on quarterly reports versus the issue of daily or  
24 frequent data input and management.

25 We believe that this focus on the quarterly

1 reports creates confusion and it does not address what is  
2 our core concern, which has been whether daily entry of  
3 information in a book or in a computer, however they -- I'm  
4 assuming mostly computers now -- the entering the  
5 transactions in the computer and maintaining the current  
6 reconciliation of the books is a distinct difference from  
7 quarterly reporting, and the report analysis focuses on the  
8 quarterly reports.

9           Our office has never denied that a quarterly  
10 report is a mandate. It's a new activity that wasn't  
11 required before. And, as far as the issue of the actual  
12 reductions that were made, in a sense, that's a distractor,  
13 because we've never really contested that the reductions  
14 were perfectly accurate, that there is certainly a degree  
15 of arbitrariness.

16           And I think when you look at it from the  
17 perspective of those folks who had to analyze the claim,  
18 they were presented with what I think we could call -- at  
19 least potentially call -- a kitchen sink claim. Everything  
20 was claimed: things that we did not believe were  
21 reimbursable and things that did appear to be reimbursable.

22           We could have taken a very aggressive approach and  
23 simply said: The documents don't support the claim. They  
24 don't distinguish between what we believe is reimbursable  
25 and not and pay nothing. They chose to take a middle

1 ground. And, obviously, that involves some arbitrariness.  
2 But, in the end, I think that's a red herring, because we  
3 get back to the basic question of whether daily or every  
4 other day, frequent data input and data management is  
5 covered under the mandate or whether it derives from some  
6 other source.

7           Our central issue and our point has been all the  
8 way through, and all of the back and forth, which helps to  
9 create, I don't know, three to four inches of documents  
10 here, has been that the frequent data -- the frequent entry  
11 of data and reconciliation of books is not -- first of all,  
12 is not mandated by the statute. The statute talks simply  
13 about reporting, not how you keep your books. It either  
14 explicitly or implicitly doesn't require that frequent  
15 entry of data.

16           In fact, when you look at the staff analysis, we  
17 recognize that this does not necessarily require a daily  
18 activity because they find that the report, as to  
19 compliance or noncompliance, is a point-in-time report, not  
20 a daily report, so, theoretically, depending on the volume  
21 of transactions, of course, that you have, you could set  
22 aside your receipts and your records of transactions and do  
23 them monthly, depending on your volume, and then you would  
24 still be able to, at the end of the quarter, generate a  
25 report that contained a statement on that date of the

1 compliance or noncompliance.

2           And we also find that the issue of whether it's --  
3 daily entries are necessary is really driven by several  
4 other factors, not the existence of a statute. Some -- in  
5 this case, the county has several specific limitations on  
6 where their investments can be and what percentage they can  
7 have of a certain type of investment. Now, if your policy  
8 says that, then that is going to force your hand to know,  
9 as you purchase or cash-in your investments, where you  
10 stand right then.

11           So that daily need to know is driven by the policy  
12 of placing specific limitations on certain investments.  
13 Also, it's driven by a desire to maximize returns, which is  
14 certainly not an appropriate goal, but, again, that doesn't  
15 convert that daily need to a mandate. It's simply not  
16 found in the statute.

17           Also, we find, we believe, that even if someone  
18 can't -- if you could somehow derive a need for a daily  
19 data management or entry that if you look at the existing  
20 requirements on a treasurer that you'll find that those  
21 already exist. And this, again, is an issue where the  
22 focus on the issue of quarterly reports versus frequent  
23 data entry leaves our assertion essentially unanswered.

24           Frequently, the -- when looking at the statutes or  
25 discussions of a fiduciary duty, the response from the

1 analysis is that this does not address a quarterly report.  
2 And, in fact, on one page here -- it's on pages 22 and 23  
3 of the staff report. If we start on page 22 -- I don't  
4 know if everyone necessarily wants to look at it, but,  
5 starting under the bolded title of, "If the challenged  
6 activities are required by other sources and preexisting  
7 law, are they reimbursable?"

8           At the end of every -- almost every paragraph, you  
9 would see the "requirements of the quarterly report of  
10 investments." And, frequently, the fact that either the  
11 statutes or the fiduciary duty do not specifically address  
12 quarterly reports, that is used as a basis to reject their  
13 importance to the issue. And our assertion has always been  
14 that the fiduciary duty and/or statutory duties mandate or  
15 logically require the frequent entry of data, not any  
16 reporting, not any subsequent reporting.

17           I think a couple statutory sections -- I hate to  
18 start driving around through the documents here, but I  
19 think are particularly important. We look at 26905, which  
20 is back at page 247. And, if you do not want to flip, I  
21 will -- they're very -- frequently very short statutes, and  
22 I can certainly read those quickly, but 26905 states that  
23 "Not later than the last day of each month, the auditor  
24 shall reconcile the cash and investment accounts as stated  
25 on the auditor's books with the cash and investment

1 accounts as stated on the treasurer's books [after] the  
2 close of business of the preceeding month to determine that  
3 the amounts in those accounts as stated on the books of the  
4 treasurer are in agreement with the amounts of those  
5 accounts as stated on the books of the auditor."

6           Now, it seems rather difficult for anyone to  
7 engage in this comparison if the data has not been entered  
8 into some source, collated, a running total, something  
9 along that sort, some type of management of the data has  
10 occurred. I won't go ahead and read the other statutes.  
11 They are similar in point that they require an accounting,  
12 usually on a -- at least on a monthly basis if not more  
13 frequent, by the treasurer of money coming in and out of  
14 the treasury.

15           And if we -- in fact, we note that the staff  
16 analysis they agree that there are some substantial  
17 reporting duties under section 27603. Again, however, they  
18 point to the fact that it doesn't require a quarterly  
19 report, but we don't believe that is really the question  
20 before us.

21           In fact, both experts, Dr. Tootelian, who is  
22 referred to in here, as well as Ms. Jamison, both point to  
23 the fact that -- especially with the County of L.A.'s size,  
24 that you simply cannot, as a matter of course, not enter  
25 data more than a couple of -- more frequently or further

1 apart than a couple of days, which would require two or  
2 three times a week the entry of data.

3           And one last point on that is that common law does  
4 apply. Common law can be a little difficult to deal with.  
5 It's not nice and neat like statutes and it's all listed  
6 out, but there has been, for the longest time -- there's  
7 the concept of a trustee and a fiduciary duty that a  
8 trustee holds, and no one disagrees that a treasurer is a  
9 trustee of the public funds.

10           The staff agrees with that, as well. And the  
11 question then becomes: What does that mean to have a  
12 fiduciary duty to public funds? And it's frequently stated  
13 the ordinary business care and prudence of a person  
14 engaging in such a transaction, and it's stated in many  
15 other ways. It's, at least -- if you're dealing with  
16 someone else's -- as anyone with some business experience  
17 was dealing with someone else's money in the amount of nine  
18 billion dollars, the kind of care that they would exercise  
19 to ensure that they didn't let that person down, lose  
20 money, anything along those lines.

21           And, again, when we look at this analysis, it  
22 focuses on the point that the fiduciary duty doesn't  
23 specifically point to quarterly reports. And we get back  
24 to our -- our issue is that frequent data entry. And we  
25 find support for this from, again, both experts' reports.



1 Dr. Tootelian says that an entity as large and with a  
2 volume of transactions as L.A. that really no more than --  
3 it couldn't go less than twice a week to meet a regular  
4 business standard of ordinary business care and prudence.

5 Ms. Jamison also indicates that the frequent entry  
6 of data, because of the size of the county or the money  
7 involved, is also required. And, in fact, this is one  
8 omission from the report that concerns us is the fact that  
9 there is a specific statement made by Ms. Jamison in her  
10 report supporting our assertion that this is part of the  
11 fiduciary duty, however, that was not cited in the  
12 analysis. And, if you care to go to a page, it's 1042, and  
13 it's -- which is page 4 of Ms. Jamison's report.

14 I'll go ahead and read it: The last bullet states  
15 that, "The Controller states that most of the activities  
16 claimed for reimbursement are part of the County's  
17 'fiduciary responsibility,' and that those activities are  
18 part of day-to-day investment requirements."

19 The next statement -- the next sentence says, "I  
20 agree with this assessment." She goes on to say, however,  
21 I believe, that it is also necessary to produce the report.  
22 But I think the fact that points that there are two -- two  
23 things that require this activity, the frequent entry of  
24 data, and since one of those is a preexisting legal duty,  
25 the fiduciary duty, as well as the statutory duty, that

1 that is not, then -- it is not a mandate.

2           If the law were to go away today and we looked at  
3 what L.A. County had to do tomorrow, if we took the  
4 assertion of L.A. County that data entry is only required  
5 by the statute, frequent data entry is only required by the  
6 statute, that we would have to take the assertion that L.A.  
7 County could stick all of its receipts in a box and put  
8 them in the top shelf of the closet and not deal with them,  
9 and that just does not fit with what we all expect that a  
10 treasurer does.

11           There's one other concern and that is the use of  
12 the regulation section, 1183.1, which is cited in the staff  
13 report, which discusses -- part of it is the discussion of  
14 reasonably -- reasonable method of complying with the  
15 mandate. And we believe that the reliance on that code  
16 section in this proceeding is misplaced, because 1183.1 is  
17 found in article III, which is entitled, "Test Claims," and  
18 it has numerous sections, and it, basically,  
19 chronologically covers everything from the initial filing  
20 of the test claim to the statewide cost estimate, all the  
21 hearings on the test claim, the Statement of Decision,  
22 those types of things. And, in fact, the section is  
23 entitled, "Submission of Proposed Parameters and  
24 Guidelines."

25           It says, in part, that "These Proposed Parameters

1 and Guidelines shall describe the claimable reimbursable  
2 cost and contain the following information." No. 4, which  
3 is cited by the staff analysis, says, "A description of the  
4 specific cost and types of cost that are reimbursable,  
5 including one-time cost and ongoing cost, and a description  
6 of the most reasonable methods of complying with the  
7 mandate." However, though, unfortunately, this was placed  
8 in the section that deals with the adoption of parameters  
9 and guidelines, not a hearing on an incorrect reduction  
10 claim. That is found under article VIII, which is entitled  
11 "Other Hearings."

12           And the problem is is that the adoption here  
13 simply allows for a post facto change in what the P's and  
14 G's are, whereas, if we applied it back at the time of the  
15 adoption of the proposed parameters and guidelines, it  
16 would be an upfront analysis. And, you know, arguably,  
17 there may be an expansion on the Statement of Decision but  
18 one based on some reasonable necessity.

19           At this point, we're beyond that procedure and  
20 we're analyzing whether the -- under the parameters and  
21 guidelines as they exist that whether this is covered, and  
22 we believe that reliance on that section is inapplicable at  
23 this stage in the proceedings.

24           With that, we would end our comments.

25           CHAIRPERSON PORINI: All right. Questions from

1 members?

2 Mr. Sherwood.

3 MR. SHERWOOD: It's a very interesting case to me  
4 and -- because of what I do on a day-to-day basis, run  
5 the state portfolio, plus I was involved in the task force  
6 from supplying information and data and some involvement  
7 into some of the decisions or input into some of those  
8 decisions. And I'd just like to say, too, at this time, at  
9 that time I had involvement in looking at all of the  
10 portfolios around the state, right along with Orange  
11 County, and I must compliment L.A. County on the job that  
12 they did and have done over the years.

13 In my experience, in dealing with the counties,  
14 they run a very good program, and I'd just like to  
15 compliment him on that. And it's been a good conservative  
16 program, which, frankly, understands the safety liquidity  
17 and yield in that order.

18 Mr. Spillane (sic), I know you've been involved  
19 with this program quite a while, as far as, you know,  
20 oversight people.

21 CHAIRPERSON PORINI: Mr. Kaye.

22 MR. KAYE: Sure. Just for the record, I'd like to  
23 relate that, unfortunately, Mr. Joseph Spillane, our  
24 Assistant Treasurer-Tax Collector, got the flu and so  
25 Mr. Chris Rieger is here.

1           MR. SHERWOOD: Oh. And I assume you worked with  
2 him?

3           MR. RIEGER: Yeah. I'm the person who has the  
4 stuff that produces the reports.

5           MR. SHERWOOD: Okay. Great. Thank you.

6           But there are a couple things, comments, I need to  
7 make and resolve in my own mind, because I think there are  
8 some partial mandates on this issue, and some, I believe,  
9 are fairly clear in nature and some are very complicated,  
10 to try to ferret out what is or should be included as a  
11 mandate. And Mr. Silva is dealing with some very good  
12 issues and made some good points in his analysis.

13           One of the problems I have is: I think there are  
14 statutes that directly relate to this reporting on the  
15 day-to-day basis, and I think those statutes relate to  
16 the -- as I looked at this, too, 53601, which were all in  
17 place before '95-'96, which deal with the types of  
18 investments that can be purchased.

19           And, in those statutes, it talks about certain  
20 restrictions, for instance, commercial paper, 180 days, 270  
21 days, banker's acceptances, reverse repo., credit quality  
22 of certain investments, bank report, commercial paper, so  
23 that there are things that happen every day where I believe  
24 the county, or any investment manager, under the statute  
25 would have to have a listing before them of what they hold

1 in their portfolio that day, because I think every day,  
2 when you make these investments, at the end of the day,  
3 someone needs to look at these investments made by your  
4 investment people to determine they stayed within the  
5 compliance of these statutes. The statutes are driving  
6 that need. It's just not a decision I think you can make  
7 just because you think you need to have compliance.

8           What I'm saying is: You have to be within the  
9 statute, otherwise, you're breaking the law. So I think  
10 every day there are investments being made and every day  
11 these need to be listed on some type of subsidiary ledger.  
12 And I think when you list them you also need to talk about  
13 the cost, their par, and many of the items that we're  
14 asking for in the quarterly report that the state is asking  
15 for -- because you need to know every day what that cost  
16 was, because you may have to go back to the market and sell  
17 it. You may not want to go into that market. And you're  
18 buying the whole portfolio like we are.

19           But, bottom line, normally, we don't want to have  
20 to go in and sell, but if some unforeseen circumstance  
21 happens, you have to go in and sell, then you have to know  
22 the cost in order to sell that security so you can  
23 determine whether that's the right security to sell,  
24 obviously, what's the profit or loss.

25           But, also, whenever you're selling these

1 securities, you need to deliver the securities, or take  
2 delivery, and the clearing agent on the other side, in our  
3 case, CitiBank, needs to have the information on hand as to  
4 what price data I've been sold at, and it needs to have the  
5 financial so they know when they take the security in or  
6 release it they're releasing the right security, number  
7 one; number two, at the right price, otherwise, you end up  
8 with a failure, because everything is down to the penny in  
9 this business, when you're clearing these items, normally.

10           Now, we take delivery upon payment. I believe  
11 probably L.A. County does the same thing. So we need a lot  
12 of information. It has to be within the system. We need  
13 to be able to access it. Some of the same information is  
14 the information that, on a quarterly basis, on a point in  
15 time, you need to pull out. So what I'm saying is it's  
16 there, and I think you need to track it, even through a  
17 subsidiary ledger.

18           I can remember on the task force, when we looked  
19 at what we were attempting to put into place or recommend  
20 to the governor and the Legislature, because the task force  
21 did make the recommendation, we wanted to attempt to keep  
22 the cost down and yet we wanted to have specific  
23 information, so we said: Let's go to quarterly instead of  
24 monthly.

25           And the other thing we did -- what's the most

1 important issue that we need to have feedback on? We  
2 zeroed-in on market evaluation, because market evaluation,  
3 if you're an astute investor or have some knowledge and  
4 background, will tell you, frankly immediately, what type  
5 of program someone is running. And I'm bringing up this  
6 right now because I think that was something that was not  
7 required of the County of L.A. or the State of California  
8 on a quarterly basis.

9           Market evaluation, I believe, is something that  
10 they should be paid for, and you should be compensated by  
11 the state because we require you to do that, and some very  
12 important element of the entire statute, and I think  
13 probably the most important element in some ways, because  
14 L.A. County is twenty-five percent underwater. State of  
15 California, at the time, was about two percent underwater,  
16 and L.A. County probably was about the same, maybe better.  
17 By "underwater," I mean losses, paper losses, in their  
18 portfolio.

19           So if people had known that L.A. County was  
20 twenty-five percent underwater, if a report had been given  
21 quarterly, the supervisors, who weren't involved in  
22 oversight, could have seen the disaster beforehand, but they  
23 didn't know this. So the task force said, "Let's put a  
24 market evaluation requirement in." To do that market  
25 evaluation, it's not as easy as it looks.



1           You have to go out and look at each security.  
2   Now, there are services out there that provide this  
3   service. You use ADS, I believe.  
4           MR. RIEGER: Um, it's Resource I.Q. now is the  
5   investment --  
6           MR. SHERWOOD: What?  
7           MR. RIEGER: Resource I.Q. is the investment  
8   reporting system now.  
9           MR. SHERWOOD: It comes in --  
10          MR. RIEGER: We get the market price from B & Y,  
11   though.  
12          MR. SHERWOOD: Okay. We go out and we get it from  
13   our custodian, CitiBank. Now, in our typical case, we're a  
14   big gorilla in the business, so, therefore, quite frankly,  
15   we're not paying for this service. We go to Merrill Lynch.  
16   And, by the way, you can't get all these items from one  
17   entity. Some items are very difficult to get prices on, so  
18   we go to Merrill Lynch, we go to CitiBank, we go to Zion's  
19   Bank. We go to different entities. And, frankly, we're  
20   getting most of this marketing evaluation information free.  
21          But, before we developed this system, we did it  
22   in-house by hand, it took a lot of time. So we had to go  
23   out -- it took about forty hours a week, in our estimation,  
24   to do it for our portfolio. But then what we've done --  
25   we've done a little bit more than that, I should say.

1           When we went to CitiBank, and using our own  
2 computer system and a more, you know, user-friendly system,  
3 computerization, the time moved down to about forty hours a  
4 week, in our mind. But the bottom line is: That's very  
5 important information to gather. It wasn't required  
6 before, and I think it's very clear that local governments  
7 should be compensated for that particular function.

8           And I believe that's where ADS comes in and some  
9 of your portfolio technology. But I will also say that a  
10 lot of the information is going to ADS probably on a daily  
11 basis, what's required for you to meet the statutory  
12 requirements of -- related to the types of investments you  
13 have to purchase. Plus, I'd have to say we're looking at a  
14 point in time here, a quarterly point in time, and,  
15 therefore, not every investment you make during that  
16 quarter is going to show up at quarter-end on the quarterly  
17 investment report.

18           I think you have a, um -- I noticed, what, ten,  
19 eleven percent of the securities you buy are over thirty  
20 days and --

21           MR. RIEGER: That's close.

22           MR. SHERWOOD: And the duration --

23           MR. RIEGER: 279 days.

24           MR. SHERWOOD: 279. So you've got a lot of  
25 turnover in the quarter, securities running off and on.

1 It'll never show up on that quarterly report. So some of  
2 that input going in daily, that you're putting in data for,  
3 I think, other reasons, is not really required for the  
4 quarterly report. So I don't think the whole system can be  
5 charged off as a mandate, on the reporting taking place on  
6 a daily basis. I think part of it can, possibly, but not  
7 all of it.

8 MR. KAYE: We'd like just to point out, for the  
9 record, that a very small fraction of our total enterprise  
10 costs in doing what you are just describing in graphic  
11 detail is --

12 MR. SHERWOOD: Too much detail you're telling me.

13 MR. KAYE: No. I think it's important for  
14 everyone to hear the complexity of what goes on, and more  
15 than the complexity is the importance. I just want to  
16 establish, for the record, that of our three-hundred-and-  
17 twenty-five-thousand-dollar claim, I think it was, for '97,  
18 '97-'98, that that just represents a small fraction of the  
19 costs of doing everything that you described. So we're not  
20 charging the state for more than a small fraction of that  
21 entire enterprise for us.

22 And I was amazed myself to hear the scope of our  
23 operation. And Chris can talk more about that, in terms of  
24 our daily volume and what we do and that kind of thing.

25 MR. SHERWOOD: And I think the letters that we

1 received are -- that came in from Newport and King were  
2 very good in explaining the process. If you were to look  
3 at the process that they outlined in their letters, it was  
4 very good but -- so I'm thinking there's some partial costs  
5 here, and I think the controller is struggling with this,  
6 because they know that some of these daily transactions  
7 that go into any system are required, I believe, because of  
8 other statutes.

9           Now, the one area, I think you can guess, again,  
10 that is complicated is the cash flow. We all know you need  
11 some indication of cash flow to run an investment program,  
12 when we get back to fiduciary or a prudent man. And in our  
13 particular case, at the state, we ran a six-month cash flow  
14 already.

15           The problem is: I think you, as an investment,  
16 whether L.A. County or any other county or small city, have  
17 to have some indication of cash flow, once again, because  
18 of the statute and what they tell you related to how or  
19 what you can buy. You have to have cash.

20           If you wish to go into the market today and buy a  
21 piece of paper, there's a restriction of 270 days, but,  
22 between zero and 270 days, there's interest rate  
23 considerations that do occur. You're going to make a  
24 decision. Maybe we wish to buy 120-day piece of commercial  
25 paper a hundred and twenty days out, maybe because the rate

1 is -- that's the best rate, the highest rate you can get  
2 buying that day in that particular instant, but you're  
3 really driven for your liquidity.

4           You have to be able to provide liquidity to the  
5 participants in your program, so you need some cash flow  
6 feeling as to whether you can go out 120 days. Now, you  
7 may decide through cash flow it's ten days. Now let me say  
8 this: You can be an investor that has a horizon of one day  
9 or two days; maybe your investment horizon says I want to  
10 provide liquidity up -- due to cash flow, up to ten days,  
11 based on a ten-day cash flow. Anything after ten days, I'm  
12 going to buy treasury bills or I'm going to buy 30-day,  
13 60-day, or 90-day treasury bills, and, if I need cash flow  
14 availability after that 30-day period, I'm going to sell  
15 those securities to meet my liquidity needs.

16           Now, you're taking taking some risk, but because  
17 it's short, it's a very short-term market risk. So what  
18 I'm saying is that every investment program in this state,  
19 or I would think probably throughout this country, would  
20 have to have some indication of what its cash flow was in  
21 order to run an investment program and -- but it doesn't  
22 necessarily have to be six months.

23           MR. KAYE: Oh, I see.

24           MR. SHERWOOD: Do you see what I'm getting at  
25 here?

1 MR. KAYE: Yeah.

2 MR. SHERWOOD: We said in the statute six months.  
3 Well, it could be L.A. County felt, based on policy, that  
4 they needed a 60-day or a 90-day cash flow, let's say  
5 before 1995, before the statute was written, because they  
6 felt that they were going to address their liquidity needs  
7 through liquidity of treasury bills, not so much on a  
8 day-by-day, cash-flow analysis. Maybe a smaller entity may  
9 even pull in a little bit short. We use a six-month  
10 horizon. We look out six months. We look at each day out  
11 of six months. We determine our cash flow needs and we  
12 make sure we have dollars maturing -- or maturity of  
13 securities on those dates to cover the cash flow needs on  
14 those dates.

15 After six months, we -- that's our horizon. After  
16 that, we use other securities that we feel could be sold  
17 into the marketplace. So what I'm getting back to is: I  
18 think cash flow is an area, providing the six-month cash  
19 flow analysis, that there are some costs involved in doing  
20 this, depending, really, on what your investment philosophy  
21 and what your cash flow is, but I don't think you can write  
22 off all the costs for cash flow, because I think you're  
23 required to meet some of the statutes that you have that  
24 tell you what you can buy and sell.

25 I think you needed to have a cash flow feeling,

1 because -- whether it be reversing securities or whether it  
2 be taking money overnight. I think you needed to know a  
3 little bit about your cash flow in order to make a prudent  
4 investment under those statutes and meet the requirements  
5 of those statutes.

6           So, you know, I'm in between what the controller  
7 has done here. I'm not -- I see what you say here, that  
8 they were neither correct nor reasonable. I don't know if  
9 I can say reasonable. Maybe it was a little harsh, but,  
10 you know, analysis went into it. Maybe it didn't go as  
11 extensive, but I do feel we have a situation here, when  
12 there are costs that were mandated upon local.

13           And I think the answer -- quite frankly, what  
14 staff has done here is fairly close to what the answer is,  
15 except I have a problem in just saying -- and I've read all  
16 of Conny's input, which is very good -- I think the answer  
17 is close here but not right on it. I think that gets back  
18 to what the controller has to look at when they look at  
19 these claims and try to determine -- and it's a difficult  
20 job for both sides to substantiate what they're giving the  
21 controller for the controller to decide whether it makes  
22 sense or not.

23           MR. KAYE: Right. I think you're coming from a  
24 place where we also feel the need to -- perhaps, if the  
25 Commission were to adopt staff's recommendation, I don't

1 think we or the State Controller could then translate that  
2 into a dollar figure.

3 I think, for the record -- and, again, I don't  
4 mean light of this, because I just take -- as an aside,  
5 tell you our normal operation in our SB 90 office in  
6 Los Angeles County. We get every -- you know, I shouldn't  
7 say this, but every day we get dinged here and there and so  
8 forth by the State Controller's office, and sometimes we're  
9 right, they're right and so forth.

10 And we usually handle -- we don't bother this  
11 Commission over things like this, but, in this case, I  
12 believe, for '97-'98, we had a claim of in excess of  
13 \$300,000 that was reduced to \$325, and, at the very least,  
14 I have to explain that to my boss and so forth. And, you  
15 know, basically everybody's questioning what is going on.  
16 And we tried to pursue this and so forth.

17 And there's, obviously, a major difference of  
18 opinion, and our feeling is we're very anxious to move  
19 forward and develop the kind of communication and dialogue  
20 under the guidance of this Commission's decision. And we  
21 realize that if we had three times the amount of time we  
22 wouldn't necessarily come up with a better decision,  
23 because it is a very complicated area, and we're anxious to  
24 move forward and to say this is the Commission's input and  
25 direction generally in this area. And, obviously, we've



1 got to talk and negotiate, you know, regarding the -- how  
2 you translate that into the real specifics.

3           Again, the thing that I would reemphasize is  
4 that -- and, again, I'm not an expert in this area, and in  
5 just listening to what you had to say, Commissioner  
6 Sherwood, it appears as though we are doing a lot, if not  
7 even more than what you're describing, but I can tell you,  
8 having talked with our staff, I am prepared to go into even  
9 greater detail today, that our entire enterprise is quite a  
10 bit more expensive than \$300,000 a year, and I can assure  
11 you that.

12           We're very cognizant of all the statutory  
13 requirements and all the reasons. And, when we prepare an  
14 SB 90 claim to send into the State Controller's office, we  
15 ask the department to go into a deep think and to really  
16 consider what they're claiming and to go into some great  
17 detail, and I believe we did that on this process. So I  
18 think you'll find, generally, that most of the costs that  
19 we claimed are well within the purview of the claiming  
20 instructions as slightly interpreted by this decision.

21           CHAIRPERSON PORINI: Other questions from members?

22           Mr. Harrigan and then Ms. Steinmeier.

23           MR. HARRIGAN: I think the comments that  
24 Mr. Sherwood made were very appropriate. I think, also,  
25 Mr. Silva, in his opening statement, mentioned that there

1 may have been some arbitrariness associated with the  
2 reduction claim. And speaking as, also, a member of the  
3 Controller's Office, I feel that, you know, we're certainly  
4 open to, you know, re-looking at other information to  
5 support the claim.

6           You know, a question that might come up is, you  
7 know: If the legislation didn't exist today, would the  
8 300,000-dollar claim that you had submitted all go away?

9           And that's, certainly, the question that only you  
10 can answer.

11           MR. KAYE: And the answer is no.

12           MR. HARRIGAN: Ah. Okay. And why is that?

13           MR. KAYE: Well, we would say, generally, for the  
14 same reason that Orange County's situation didn't go away  
15 is -- just to refresh our memories, what happened with the  
16 situation is that earlier on, I believe, the state had  
17 mandated various investment reporting requirements and then  
18 had repealed those requirements which are very, very  
19 specific, and we had the unfortunate situation with Orange  
20 County.

21           The state reinstated those requirements. So these  
22 are above and beyond. And I think Commissioner Sherwood  
23 has explained some ways, when he was talking about the cash  
24 flow analysis.

25           We have, many of you may be aware, many, many

1 school districts in our investment pool, and they may need  
2 money four or five or six months from now, and, so, yes, we  
3 absolutely have to make sure that when they need the money  
4 to start construction on the new facility or for payroll or  
5 for whatever reason that that money is there. And this is  
6 something where -- as Commission Sherwood pointed out, that  
7 we may normally have done that analysis every, you know,  
8 two or three, you know, months or a month out, and so  
9 forth. So this did impose additional requirements.

10           And I think the other thing is that Professor  
11 Tootelian pointed out, as Shawn Silva mentioned, that we  
12 might input our data two times a week, and, with all  
13 deference to Professor Tootelian, I believe, and Chris can  
14 reinforce this or correct me if I'm wrong, it's eight  
15 hundred million dollars a day is what we have in  
16 transactions. And, certainly, if I were the schools and in  
17 the investment pool, I wouldn't want to see that wait, you  
18 know, to two times a week. A daily entry is -- I'd want to  
19 see that almost immediately entered, and I think it's those  
20 additional costs that we're talking about today.

21           MR. HARRIGAN: But, sir, in your response there  
22 you said that, well, if the legislation didn't exist today  
23 not all costs would go away. So why are we attempting to  
24 charge all of these costs against this particular claim?

25           MR. KAYE: Again, perhaps I didn't communicate

1 clearly enough. I --

2 MR. HARRIGAN: Are there other statutes that are  
3 out there?

4 MR. KAYE: There are various statutes, as  
5 Commissioner Sherwood has mentioned, which have some  
6 varying on this; however, we have tried to establish a  
7 relationship between the reimbursable costs under these  
8 parameters and guidelines, these claiming instructions, and  
9 the underlying mandate. As I said before, if we were to  
10 charge the entire cost of this program, it would be  
11 substantially more than 300,000, and certainly more than  
12 \$325.

13 MR. HARRIGAN: Oh, I think there's a recognition  
14 about the \$325.

15 MR. KAYE: Okay. Yeah.

16 MR. HARRIGAN: As I'm sure that there's also  
17 recognition about the 300,000 plus.

18 MR. KAYE: Okay.

19 CHAIRPERSON PORINI: Ms. Steinmeier.

20 MS. STEINMEIER: Bill, we could have used you on  
21 November the 20th, 1997.

22 CHAIRPERSON PORINI: He was the only one of us  
23 here, right?

24 MS. STEINMEIER: I think that the group -- yeah,  
25 and he had a substitute that day.

1                   CHAIRPERSON PORINI:   Okay.

2                   MS. STEINMEIER:   And the only question asked -- I  
3   went back and read the transcripts.  That was my first few  
4   months on the Commission and I was pretty green here, but  
5   Mr. Van Houten was there for Bill Sherwood.  Mr. Cox was  
6   the only one that asked that question.  It was about the  
7   subsidiary ledger, which, if I understood Bill correctly,  
8   it was different than what Bill sees now; am I correct?

9                   MR. SHERWOOD:   Well, at that time of the task  
10   force, I think the reasoning at that time was that most  
11   entities who invested in the State of California, most  
12   local entities, had subsidiary ledgers, much like we did in  
13   our office, and, therefore, it would probably be simpler to  
14   go into those subsidiary ledgers and pull out the required  
15   information needed for the quarterly report.

16                  But, now, once again, I'm just telling you the way  
17   I perceived it.  It doesn't say that in law, but the idea  
18   was to reduce the workload --

19                  MS. STEINMEIER:   Right.  It was already there.

20                  MR. SHERWOOD:   -- and it was already there, and  
21   maybe it wasn't there for everyone, but it seemed like to  
22   run a program under a program.  Most people carry out the  
23   letter of the law, would use some type of documentation on  
24   a daily basis.  And, quite frankly, I don't know how they  
25   could trade their securities without having some of this

1 data in a subsidiary file.

2 MS. STEINMEIER: But now we're dealing with a set  
3 of P's and G's that we adopted on consent with one question  
4 from Mr. Cox about a subsidiary ledger, which we did  
5 approve, by the way, as a --

6 MR. SHERWOOD: Yes, it was approved that day.

7 MS. STEINMEIER: So it's in these P's and G's  
8 right now, and that's the document that's before us that  
9 we're really looking at and saying: Did the Controller  
10 interpret them correctly and did they -- or did they  
11 incorrectly interpret them and reduce their claim? That's  
12 the question before the Commission today; the only  
13 question, actually.

14 Although this is very instructive -- like I said,  
15 I wish you had been there on that day -- it wouldn't have  
16 been on consent. They would have talked about it a whole  
17 lot more, in light of the fact that you've been on the task  
18 force --

19 And this is post task, correct?

20 MR. SHERWOOD: Correct.

21 MS. STEINMEIER: So you already had that body of  
22 knowledge. But that didn't happen so now we're dealing  
23 with what we have here. I'm not sure about the process,  
24 because, when I've been here, we've never done this, but,  
25 to me, it almost looks like we need to go back to these P's

1 and G's and rethink them and amend them.

2 And I'd like to actually get Ms. Harrison (sic) on  
3 this question because you reviewed them pretty carefully,  
4 and seemed to yourself kind of -- I mean debating with  
5 yourself about what's there and what isn't there through  
6 your report.

7 So could you comment on that?

8 CHAIRPERSON PORINI: Ms. Jamison.

9 MS. STEINMEIER: First, Ellen, about the amendment  
10 issue.

11 MS. FISHMAN: Right. I'd just like to remind the  
12 Commissioners that we do have pending a request to amend  
13 the P's and G's on this case under "Investment Reports,"  
14 and our hope is that, once a decision is made on this IRC,  
15 we will proceed, ideally, next month, to make -- bring the  
16 P's and G's amendment before you.

17 MS. STEINMEIER: That plays into our decision  
18 today, that's why I asked you.

19 MS. FISHMAN: Well, and some of the issues that  
20 you're talking about really relate to, as some of the  
21 Commissioners said, to P's and G's issues and P's and G's  
22 amendments as opposed to the issue here as just stated,  
23 which is: Did the SCO incorrectly reduce this claim based  
24 on the existing P's and G's in claiming instructions?

25 MS. STEINMEIER: That's the question before the

1 Commission.

2 MS. FISHMAN: And, fortunately for staff, we do  
3 not have to determine anything about amount or what was  
4 correctly reduced or what wasn't correctly reduced. That's  
5 something that would go back to the parties to determine.

6 MS. STEINMEIER: Next question for somebody else.

7 CHAIRPERSON PORINI: Thank you.

8 Ms. Jamison.

9 MS. JAMISON: Yes. Thank you.

10 I guess when I was first given this assignment and  
11 received the voluminous material from the county my first  
12 gut reaction was, well, they have to do all of this anyway.  
13 Why should they be reimbursed? But, when I read the P's  
14 and G's, there was not an exception for you already had to  
15 do this anyway, and so my feeling was, well, what if you  
16 had another smaller agency that wasn't doing this that the  
17 new mandate requires that they do it and reimburses them,  
18 they can do that.

19 Well, L.A. County may have been doing most or all  
20 of it then. Should they not get reimbursed because they  
21 were being prudent all along? So it came down to  
22 another question: Well, is being prudent a mandate? And  
23 that is normally a question for me. I don't know if it's a  
24 mandate, and I left that question open.

25 So -- I mean, after I completed it, you know, my



1 reaction went the other way is that if I read the P's and  
2 G's, all of these things are now mandated, even though they  
3 may have been doing them before, and it was not easy for me  
4 to tell which one they were doing before and which one they  
5 weren't, but, to the extent that they were mandated  
6 activities, the way I read it, was that they should be  
7 reimbursed.

8           Now, I don't know if the P's and G's were not  
9 written well or that somebody didn't think of this for  
10 other ones, because I'm not familiar with the process in  
11 general, but it seemed to me that in the future you might  
12 want to consider that if you do want the exception, that it  
13 was something you're doing already, then you'll get  
14 reimbursed, but then, obviously, there's an inequity  
15 between agencies who may have been doing it and agencies  
16 who weren't.

17           CHAIRPERSON PORINI: Other comments, questions?

18           Mr. Sherwood.

19           MR. SHERWOOD: I have a lot of questions.

20           CHAIRPERSON PORINI: Yeah.

21           MR. SHERWOOD: I'm not quite sure, when I read  
22 staff's findings here, that I can be in agreement with all  
23 of them. My problem is: I'm in partial agreement -- in  
24 agreement with quite a few of them, but partially agreeing  
25 with some of them. And I'm not sure what we're doing here

1 gives enough direction to the controller to make their  
2 decision, once they look over these claims.

3           When I go down, for instance, to -- on page 24 of  
4 the recommendation to the last item, "Challenged  
5 activities, including the use of subsidiary ledgers are  
6 reimbursable to the extent documented," to me, we get into  
7 an area there where I believe that, and this makes sense,  
8 to the extent it's documented. So they have to document  
9 this through the controller, because I feel this is an area  
10 where there's partial reimbursement, because there are  
11 certain things, I believe, that they do every day at the  
12 county level that creates subsidiary ledgers that goes  
13 beyond the requirement, the quarterly reporting  
14 requirement.

15           You have a subsidiary ledger. You have a lot of  
16 documents on it related to possibly all these exceptions  
17 that were made, and maybe they're being entered under ADS  
18 or under their in-house computer system, so -- and yet some  
19 of these entries are being made for the future creation,  
20 possibly, of this quarterly report.

21           So I think that statement makes sense, except I  
22 think we have to recognize that a controller looking at  
23 this is going to possibly say not all of these costs or  
24 expenses apply just to the quarterly report, and that's  
25 where we get into a judgment and examination process as to

1 what does or does not. So I think we're going to be backed  
2 into that situation pertinent to this particular  
3 recommendation.

4 Now, if I go to the next page, section 27063,  
5 third item down, it does not address -- no. I'm sorry.  
6 Next item up, "The challenged activities of entering and  
7 managing data to be included in the quarterly report of  
8 investments mandated by," dah dah dah, "are reimbursable,"  
9 now, are we saying there that all the challenged activities  
10 of entering and managing data to be included in the  
11 quarterly report? I guess I need to be a little more  
12 clear, in my mind, as to what we're trying to say there on  
13 that particular item.

14 The "Challenged activities," there may be some  
15 activities that the controller challenged there that are  
16 pertinent to everyday requirements, possibly L.A. County,  
17 and they would have been doing, and required to do, on a  
18 day-to-day basis under statute. However, are we saying  
19 there that we're just saying that to pull the information  
20 off of the subsidiary ledgers and then there's a process  
21 involved in creating a quarterly report and putting it in a  
22 quarterly report? There's a cost involved there for the  
23 locals to do this.

24 You know, to what degree there? I mean, are we  
25 saying that we're not going to give the controller or

1 attempting to tell the controller that they can't analyze  
2 and take a look at these activities from the standpoint  
3 that probably there was some prior -- other requirements  
4 that, through statute, that they were doing this prior to  
5 1995?

6           Those are the two areas of this particular  
7 analysis that bother me a little bit, and I think that gets  
8 back to the heart of the situation, also, as to the  
9 Controller's Office attempting to, in their minds, separate  
10 the wheat from the shaft, in their mind.

11           I don't know. Maybe staff has any comment on the  
12 challenged activities. I think when we look down to the  
13 prior item I was looking at, you talk about "reimbursable  
14 to the extent documented." I think that leaves open the  
15 ability for the controller, possibly, to analyze the data  
16 presented to them in the claim process. I'm not sure what  
17 we're saying in this next item that I spoke to.

18           CHAIRPERSON PORINI: Ellen, would you like to  
19 comment?

20           MS. FISHMAN: Yes, I would.

21           The staff recommendation basically attempted to  
22 do, I think, what you're talking about, that the  
23 recommendation is that the claim was incorrectly reduced  
24 and that, basically, the parties will have to get together  
25 and determine, specifically, which activities are, in fact,

1 required solely to produce this quarterly report and  
2 provide the information required by the statute and which  
3 activities were not, and the challenged activities are the  
4 activities primarily involved with the data entry and  
5 collection.

6           And one of our problems here is that the  
7 parameters and guidelines uses that very vague, broad  
8 phrase "accumulate and compile the data," so we are left  
9 with that, and that's why I think the parameters and  
10 guidelines amendment is pending, is that that is a very  
11 vague statement. And so what we have said in the staff  
12 analysis is that, yes, there are some activities that are  
13 going to be required, because of section 53646, because of  
14 this new requirement to produce this quarterly report with  
15 certain information in it, as you discussed, and that those  
16 activities, if they're new for this statute, they were  
17 determined to be a mandate and then, therefore, they're  
18 reimbursable.

19           And part of the reason that we hired our expert  
20 consultant to work with the Commission is that we wanted  
21 some additional information and guidance as to what those  
22 activities might be, what kinds of acts, what kinds of  
23 staff time would be required to put together the  
24 information that the statute requires.

25           CHAIRPERSON PORINI: Okay.

1           Ms. Steinmeier.

2           MS. STEINMEIER: For me, at least, it's clear, and  
3 I think the Controller's Office will concur, that there was  
4 an incorrect reduction. By how much is still to be debated  
5 between these folks. But that we know, there was an  
6 incorrect reduction. We do know that. And I guess I look  
7 to Mr. Sherwood or Ms. Harrison (sic) to tell us: Are we  
8 giving them enough instruction here in our staff analysis  
9 that they can work that out?

10           I don't want another IRC is what I don't want to  
11 have happen. So do we have another bill and do you want to  
12 modify any of these particular recommendations which might  
13 make it easier to come to some conclusion that will not  
14 result in another incorrect reduction claim?

15           Sorry, Bill. I know that's a hard question.

16           MR. SHERWOOD: Well, I'm not sure. No. I don't  
17 know what the answer is. I don't know if the testimony  
18 given or the discussion we've had clarifies any issues to  
19 any extent.

20           Shawn, I know you have some rather, well,  
21 significant feelings about this matter from a legal  
22 standpoint. And, no, I'm not sure what we've done here,  
23 and I'm not quite sure what we have to do to give them,  
24 both parties, a little more leeway, because the statutes  
25 require, in some cases -- I'm not sure we can be anything

1 but vague when the statute is vague at times. We run into  
2 that problem quite often here.

3 MS. STEINMEIER: Um-hum.

4 MR. SHERWOOD: Not that the Legislature is not  
5 trying to do a great job all the time, but sometimes these  
6 things are so involved and complicated that the answer is  
7 not very clear, and that's really true.

8 CHAIRPERSON PORINI: Paul?

9 MR. STARKEY: This is just a suggestion based upon  
10 what I'm hearing and sort of the way this whole thing has  
11 sort of evolved as a dispute. There are a number of  
12 different options which are available to you, in terms of  
13 procedure, and I would suggest something novel, not that it  
14 should be followed but just a suggestion:

15 Under the statute, part of our statutory duty is  
16 to resolve these disputes. One way we do that is by  
17 decision making; the other way we do that is by creating  
18 opportunities for the parties to resolve disputes  
19 themselves. In this particular case, from my point of  
20 view, one of the disputes we have, which we would have to  
21 take back the analysis on, is a legal dispute.

22 I disagree with Mr. Silva's legal conclusions and  
23 I apparently disagree with Mr. Sherwood, some of your  
24 conclusions, and I -- what you said made me think I need to  
25 take it back and look at it again, if that's the direction,

1 but one possibility is to take it back, see if we can,  
2 based on what was said today, work on it, come up with  
3 something that would give more direction, possibly get more  
4 input from the parties, and to try to bring that back.  
5 There still may be unresolved disputes if it did happen.

6 Another option appears to be that we could, if the  
7 parties are agreeable, to basically stop here, put this  
8 matter in abeyance or on hold or continuance, and see what  
9 happens in the P's and G's amendment phase and see if that  
10 is a way to develop more information such that the parties  
11 can resolve this dispute.

12 The third suggestion, and the one that I think I  
13 would suggest, and I don't know if this has ever been done  
14 before, but to have the parties consider, at this stage,  
15 given what both sides know, to basically stipulate to  
16 withdraw the claim without prejudice and go back and figure  
17 it out and see if they can get it resolved.

18 And the reason I'm suggesting that is for my  
19 economy, because, that way -- what I heard, right off the  
20 bat, was that everyone agrees that the claim was reduced  
21 incorrectly and I've also heard from the other side that  
22 there are possible areas of agreement. And in other  
23 litigation and disputes that I'm aware of, when you reach  
24 that stage of acknowledgment, you probably have a good  
25 opportunity to get it resolved.



1           So those are, at least, three options which I just  
2   wanted to put out, at this point, because we seem to be at  
3   a point of looking for a direction.

4           CHAIRPERSON PORINI: Well, members, any comments  
5   from members on the three options? And, if we have a clear  
6   direction, we'll ask Mr. Silva and Mr. Kaye to comment.

7           I'll just throw in that I feel pretty strongly  
8   that it's clear, when it comes to the P's and G's  
9   amendments, that you heard some pretty clear direction from  
10  the Commission members that we think that what exists now  
11  is a problem, it's inadequate and it needs clarification.

12          I would like to think that both parties could go  
13  back and negotiate, but I also think that I've heard,  
14  pretty clearly, that maybe our own staff needs to go back  
15  and look at its legal analysis, so I think I would lean  
16  towards going back and negotiating on this claim and  
17  cleaning it up in the P's and G's, but I don't know how  
18  other members feel.

19          MS. STEINMEIER: One of the options isn't open to  
20  us. The last one that Paul mentioned is really open to the  
21  claimant, so we don't have that option; we only have  
22  options one and two.

23          CHAIRPERSON PORINI: But we can certainly  
24  encourage it and ask for your input.

25          MS. STEINMEIER: Let's do that.

1                   CHAIRPERSON PORINI: Mr. Kaye.

2                   MR. KAYE: Thank you.

3                   Yeah. I think this is a good example of a -- sort

4 of a group brainstorming, because what we have is some --

5 obviously, a lot of experts have commented on this, and it

6 sounds as though the state and we might be ready to enter

7 into some sort of stipulated agreement regarding the IRC;

8 however, it would be, I think, a disservice, I don't

9 want to get corny, to the State of California and its

10 counties and cities to say that the matter should end

11 there. I think it needs to be carried on, and the whole

12 discussion, the whole analysis, needs to be carried on, you

13 know, after our stipulated agreement, or even above and

14 beyond our stipulated agreement in our particular IRC,

15 which we're hoping can be settled as quickly as possible.

16                   And I think we have good working relationships

17 with State Controller accounting staff, and I think we

18 can -- I feel confident that we can come up with something

19 that's reasonable and just in that matter. But, again, we

20 would hope that this entire effort regarding

21 clarification -- and I agree with most that say that the

22 parameters and guidelines should be just that, provide

23 general guidelines, but, here, we're dealing with very

24 complex areas of law, that there are a lot of reasons why

25 we do things, and, as Commissioner Sherwood has pointed

1 out, that many reasons that are found in the test claim  
2 legislation and the mandates and the P's and G's, why we  
3 need to continue to clarify the P's and G's.

4           And even if we have to -- once the P's and G's are  
5 part of the P's and G's process -- hold special workshops,  
6 because this is a strange confluence of events, because, at  
7 this point in time -- again, I don't want to give you an  
8 editorial statement, but certainly the public -- at this  
9 point in time, with all the -- just reading the newspaper  
10 headlines -- has to be assured that we are very, very  
11 diligent in our maintaining our investment scrutiny on a  
12 day-to-day and on a precise basis, and this has nothing to  
13 do with this matter, I know, but I can tell you that this  
14 will play well back home. We really do need to take the  
15 time and the effort, but we would like to proceed as  
16 quickly as we can to settle our matter and participate as  
17 much as we can in the P's and G's to follow.

18           CHAIRPERSON PORINI: Mr. Silva, do you have a  
19 comment?

20           MR. SILVA: I think the Controller's Office -- we  
21 don't have any problem with sitting down and discussing the  
22 issues and see if we can resolve it on a more informal  
23 level, and I'd also agree that the P's and G's are the  
24 thorn in our side and that that amendment to the P's and  
25 G's should proceed. And although, I think from a legal

1 perspective, it may not affect this one, because this one  
2 is based on the P's and G's as they existed then --

3 MS. STEINMEIER: Exactly.

4 MR. SILVA: -- it might provide clarification.

5 I'm not sure, but I think, at least for the future, we  
6 would have a lot better answer and know how to proceed.

7 CHAIRPERSON PORINI: Ms. Steinmeier?

8 MS. STEINMEIER: I didn't hear a withdrawal,  
9 therefore I move that we hold these P's and G's until we  
10 postpone our discussion on them and proceed -- excuse me,  
11 hold this IRC and proceed with our P's and G's amendment  
12 process.

13 MR. HARRIGAN: I'll second that.

14 CHAIRPERSON PORINI: All right. We have a motion  
15 to postpone the IRC before us and proceed with the P's and  
16 G's process and a second.

17 Any further discussion?

18 (No response.)

19 CHAIRPERSON PORINI: All right. May I have roll  
20 call.

21 MS. HIGASHI: Mr. Lazar?

22 MR. LAZAR: Yes.

23 MS. HIGASHI: Mr. Sherwood?

24 MR. SHERWOOD: Aye.

25 MS. HIGASHI: Ms. Steinmeier?

1 MS. STEINMEIER: Aye.

2 MS. HIGASHI: Ms. Williams?

3 MS. WILLIAMS: Aye.

4 MS. HIGASHI: Mr. Harrigan?

5 MR. HARRIGAN: Aye.

6 MS. HIGASHI: Ms. Porini?

7 CHAIRPERSON PORINI: Aye.

8 MS. HIGASHI: All right.

9 CHAIRPERSON PORINI: Thank you.

10 Should we take a five-minute break here?

11 (Whereupon a break was taken.)

12 CHAIRPERSON PORINI: We'll go ahead and get

13 started.

14 MS. HIGASHI: We're now at Item 4, "Adoption of

15 Proposed Parameters and Guidelines," the Brown Act Reform.

16 This item was continued from the last hearing, and it will

17 be presented by Ms. Shirley Opie, Assistant Executive

18 Director.

19 MS. OPIE: Thank you. Good morning.

20 As Paula mentioned, this item was heard at the

21 conclusion of this last hearing to allow the claimant time

22 to submit another written proposal for training. The

23 claimant submitted the proposal on April 10th. Staff

24 submits it and three other options for the Commission to

25 consider.

1           Option One is the claimant's new proposal. This  
2 option includes training on the preparation and the posting  
3 of agenda items. As noted by staff at the March hearing,  
4 these activities are generally performed by staff members.  
5 The Open Meetings Act parameters and guidelines which  
6 reimburse some legislative bodies for the preparation and  
7 posting of agenda items do not include training, thus, if  
8 this option is adopted, only the new type of bodies that  
9 are required to comply with the agenda preparation and  
10 posting requirements under Brown Act Reform which would be  
11 eligible for reimbursement for this portion of the  
12 training. The bodies that were previously covered by Open  
13 Meetings would not be eligible.

14           The claimant previously advocated training on the  
15 entire Brown Act. The declaration submitted to support the  
16 claimant's new proposal also references Brown Act, thus,  
17 it's not clear that the claimant's new proposal limits  
18 reimbursement of the training to that specifically related  
19 to the Brown Act Reform.

20           Option Two is the staff recommendation. This was  
21 submitted to the Commission in the parameters and  
22 guidelines that were heard in March. It provides ongoing  
23 training. On the new Brown Act Reform, closed session  
24 activities for all legislative bodies that are subject to  
25 the closed session requirements, including the new types of

1 bodies that are required to prepare and post agenda items,  
2 it does not include training on preparing and posting  
3 closed session agenda items because these activities are  
4 generally performed by staff and there was no request for  
5 staff training. It is limited to training members of only  
6 those bodies that actually hold closed sessions.

7 Further, if the training encompasses more subjects  
8 than the activities related to the closed session  
9 requirements, only the pro rata portion is reimbursable.

10 Option Three is the claimant's original proposal:  
11 all the time of the trainer and legislative members would  
12 be reimbursable as well as time for preparation of  
13 materials for training on the Brown Act requirements,  
14 including the new requirements of Brown Act Reform. The  
15 entire Brown Act has never been the subject of a test  
16 claim, thus, staff finds providing training on the entire  
17 Brown Act goes beyond the scope of Commission's Statement  
18 of Decision.

19 Option Four: The Department of Finance opposes  
20 the inclusion of training because it was not included in  
21 the Statement of Decision; however, at the March hearing,  
22 Department of Finance staff recommended that if training is  
23 included that it be reimbursed on a one-time basis for new  
24 members.

25 The staff recommendation submitted to the

1 Commission for the March hearing included ongoing training  
2 on the closed session requirements based on the evidence in  
3 the record. The claimants submitted declarations that  
4 because most boards and Commission members are laypersons  
5 and not attorneys, ongoing training is needed.

6           Accordingly, staff found that ongoing training  
7 constitutes a reasonable method of complying with the  
8 mandate. Staff recommends the Option Two. This option is  
9 included in the proposed parameters and guidelines  
10 beginning on page 5. Based on the evidence in the record,  
11 staff finds that ongoing training is a reimbursable  
12 activity within the context of this mandate because it  
13 constitutes a reimbursable method of complying. Training  
14 is limited to the activities expressly required by this  
15 test claim statutes.

16           Staff also recommends that the Commission  
17 authorize staff to make any non-substandard technical  
18 corrections to the parameters and guidelines following the  
19 hearing.

20           Will the parties please state their names for the  
21 record.

22           MS. STONE: Good morning, Chairman, Members of  
23 the Commission, Pamela Stone on behalf of the City of  
24 Newport Beach.

25           MR. EVERROAD: Glen Everroad, City of Newport



1 Beach.

2 MS. GEANACOU: Susan Geanacou, Department of  
3 Finance.

4 MR. PAULIN: Matt Paulin, Department of finance.

5 MR. SILVA: Shawn Silva, State Controller's  
6 Office.

7 CHAIRPERSON PORINI: All right.

8 Ms. Stone, do you want to begin?

9 MS. STONE: Yes, please. Thank you very much,  
10 Madam Chair.

11 I think one of the main issues that has not been  
12 understood by the staff is, yes, staff, too, in various  
13 sundry boards and Commissions, type up the actual agenda,  
14 however, the issue is what goes into the agenda is of  
15 critical importance as well as how that particular agenda  
16 item is worded.

17 When you had brought back in, with this particular  
18 legislation, brand new boards and Commissions, as I  
19 mentioned last time as we set out in supplemental  
20 materials, we were dealing with a number of laypersons who  
21 didn't understand why they couldn't talk about anything  
22 that was not on the agenda and didn't understand that if  
23 you had a member of the public raise an issue that is not  
24 on the agenda why it could not be heard and how to get  
25 items that they wished to discuss on the agenda.

1           Contemporaneously, you also have individuals who  
2 do not want particular items to be well-publicized to the  
3 public and wish to have the agenda item description worded  
4 in such a manner that know one will know what they're  
5 really, in fact, doing. You know, when you're dealing with  
6 local government, it is a substantially different  
7 experience than one would have with the Commission on State  
8 Mandates where it's very easy to talk about a test claim,  
9 parameters and guidelines, statewide cost estimate,  
10 incorrect reduction claim where these are the items that  
11 we're going to be discussing in closed session.

12           It's much more clear-cut and defined than what you  
13 have when you're dealing with local government, and,  
14 because have competing interests sitting on various boards  
15 and commissions, you may have one particular board member  
16 trying to make sure that there's as much public discussion  
17 on an item as possible and another board member who would  
18 just as soon that nobody ever hears about that particular  
19 issue. So when it comes to the issue of agenda  
20 preparation, what goes into an agenda, how to get matters  
21 agendized, this is very important for your new people that  
22 were brought into the Brown Act Reform.

23           I think the way to look at Brown Act Reform is it  
24 basically did two things: One is it completely revamped  
25 how you prepared closed session agendas, what has to be in

1 the agenda, what could or could not be heard in closed  
2 session, and the mechanisms by which that was to transpire.

3 The second major thing that was accomplished by  
4 Brown Act Reform is to bring in all these strange and  
5 auxiliary boards and commissions that were never previously  
6 exposed to the Brown Act before, most of which you either  
7 have staff that are appointed to it or you have volunteers  
8 and laypeople from the community.

9 And so when we're asking that the new board  
10 members be trained, it is incumbent that they know that  
11 they only discuss that which is on the agenda. If they  
12 want to discuss something, they must instruct staff to put  
13 it on the agenda. They can only discuss things which are  
14 on the agenda. The fact that staff is the one that types  
15 it up is not the critical issue; the critical issue is how  
16 the agenda controls what's in the meeting.

17 And, for that reason, we would request that you  
18 adopt Option One.

19 Thank you very much.

20 CHAIRPERSON PORINI: All right. Glen, any  
21 comments?

22 MR. EVERROAD: Well, just for the record, I'd  
23 like to relate that at the City of Newport Beach we do  
24 train whole staff and legislative bodies to provide full  
25 disclosure on all agendas. Other than that, I think Pam

1 did a very fine job representing our position.

2 CHAIRPERSON PORINI: Department of Finance,  
3 Ms. Geanacou or Mr. Paulin.

4 MS. GEANACOU: Good morning, Commission members.

5 Department of Finance would reiterate its position  
6 that we took at the last Commission meeting that because  
7 training is not included in the Commission's adopted  
8 Statement of Decision that it not be included now at the  
9 parameters and guidelines phase. If, in the alternative,  
10 the Commission is considering adopting training as an  
11 element of the P's and G's today, that you seriously  
12 consider and adopt Option Four which limits training to a  
13 one-time basis per new member particularly, specifically  
14 only and limited to the Brown Act activities that are  
15 required by this test claim legislation.

16 CHAIRPERSON PORINI: All right. Mr. Paulin,  
17 anything?

18 MR. PAULIN: Nothing further to add.

19 CHAIRPERSON PORINI: All right.  
20 Mr. Silva.

21 MR. SILVA: One concern we have with the language  
22 as proposed, the training, is that I believe we're starting  
23 to shift from training to conducting activity that a person  
24 may not have the knowledge, skill or experience to do the  
25 training on what the law is and educating someone on the

1 law, and we believe that there's a distinction between the  
2 two, that if there's an activity that one would not  
3 reasonably be expected to know how to do, that training is  
4 appropriate, but to know the law is an obligation that  
5 every citizen has, and we don't believe that training on  
6 knowing the law is a state mandate. It's an obligation of  
7 all people in this state. You can't go before the criminal  
8 courts and say, "Sorry. I didn't know that law existed."

9           There's a distinct difference between training,  
10 and I think here the one activity that potentially is kind  
11 of a hybrid is the generation of those items. Yes, every  
12 one knows how to use the English language, but, when you  
13 get to legalese, it's really a different form, and training  
14 on that aspect, we believe, is training on an activity;  
15 however, talking about the fact -- telling someone that  
16 they cannot discuss an item which is not on the agenda is  
17 teaching the law, which we don't believe is a reimbursable  
18 activity. It's an ongoing obligation of everyone to know  
19 the law.

20           With that, we would essentially follow with  
21 Finance's position that we don't believe training, except  
22 for that narrow exception, should be included or if the  
23 staff -- I'm sorry, if the Commission decides to go with  
24 one of the options that No. 4 would be appropriate.

25           CHAIRPERSON PORINI: Questions or comments from

1 members?

2 Mr. Lazar.

3 MR. LAZAR: I have a couple of questions that I'd  
4 like the staff to respond to the claimant's contention, and  
5 then, secondly, with respect to Controller's Office  
6 comments about presuming people know the law and they  
7 should know. We continually are being advised and having  
8 to advise commissions and boards and things in the city  
9 that I'm in about the Brown Act and what the ramifications  
10 are if they're violated. So I -- unfortunately, at the  
11 state level and the Legislature, they don't have to abide  
12 by that, apparently, but down in local government it's part  
13 of the life.

14 CHAIRPERSON PORINI: And maybe I could just  
15 provide some clarification. We do have the Bagley-Keene  
16 Act which some would suggest is a little more restrictive  
17 than the Brown Act, so my sympathies.

18 MR. STEINMEIER: Sure. John just sees the video  
19 and signed off on it.

20 MR. LAZAR: Every year.

21 CHAIRPERSON PORINI: All right.

22 MS. STEINMEIER: Let's just be clear about that.

23 CHAIRPERSON PORINI: All right. Staff, comment?

24 MS. OPIE: Okay. With respect to the comments  
25 about training on the preparation and posting of agenda

1 items, as far as the new material, the new proposal that  
2 was submitted by the claimant, you know, we didn't see that  
3 that was, you know, something that was specific there, and,  
4 you know, it was just the combination between the language  
5 that was submitted and the declaration supporting it that  
6 caused us concern about what, exactly, they were trying to  
7 claim here, under training, whether it was limited strictly  
8 to the Brown Act Reform or whether it was broader than that  
9 as discussed at the last hearing, and it included all the  
10 Brown Act. So there was just no distinction about that, in  
11 the proposal that was submitted.

12 CHAIRPERSON PORINI: Okay. Ms. Stone, do you have  
13 any further --

14 MS. STONE: I beg to disagree, and you'll note  
15 under Option One we have training new members of the new  
16 bodies on the specific requirements of Brown Act Reform; it  
17 was very, very specific.

18 CHAIRPERSON PORINI: Mr. Harrigan.

19 MR. HARRIGAN: I just have a question for the  
20 Department of Finance and also the Controller's Office.

21 You say on a one-time basis -- training should be  
22 on a one-time basis, training each new member, but then it  
23 goes down to the body of your proposal, and it says, "If  
24 such training is given to all members of the legislative  
25 body, whether newly appointed or existing, it's

1 reimbursable."

2           So what's the significance of the one time --

3           MS. STEINMEIER: There's a --

4           MR. HARRIGAN: -- is what I'm trying to figure

5 out.

6           MR. PAULIN: A point of clarification. I believe

7 that we were proposing one-time training for new or

8 existing members then going forward if new members came

9 onto the legislative body that they would also receive that

10 training.

11          MR. HARRIGAN: Say it again.

12          MR. PAULIN: I guess we're not sure as to what

13 your --

14          MR. HARRIGAN: As to what my question is?

15          MR. PAULIN: Yes.

16          MR. HARRIGAN: Well, I guess my question is: It

17 says on a one-time basis training each new member, then

18 down to the end of the next sentence it said, hey, whether

19 they're newly appointed or existing members, it's all

20 reimbursable.

21          So isn't there a conflict between on a one-time

22 basis?

23          CHAIRPERSON PORINI: Mr. Silva, did you want to

24 add some clarification?

25          MR. SILVA: Yes, if I could address -- at least



1 from our office's perspective, the distinction would be  
2 that it sounds like some of the other proposals would  
3 require that training be conducted each time the body is  
4 reconstituted, so maybe every two years. This, we believe,  
5 would only cover if there's a new member. And the -- and  
6 so if a person has been reelected and the body is  
7 essentially the same group of people that existed before,  
8 there's no need to redo training.

9           If there's a new member, then that new person  
10 would need training, and it seems as long as there's only  
11 one presentation that the cost is the same. Whether you  
12 make a presentation to one person or to twenty, your costs  
13 are the same. So that's how we interpret the one-time cost  
14 phrase.

15           MR. HARRIGAN: Okay.

16           MS. GEANACOU: And I think for clarification, if I  
17 may, I think this -- our Option Four presumes that there is  
18 at least one new member in the room receiving training at  
19 the time this is occurring.

20           MR. HARRIGAN: Thank you.

21           CHAIRPERSON PORINI: Okay. Other questions or  
22 comments from members?

23           Ms. Opie.

24           MS. OPIE: I just wanted to make one other  
25 comment about the training on the preparation and posting

1 of the agenda. In the Statement of Decision, and it is  
2 reflected in the P's and G's, it lists out very, I think,  
3 specifically what the reimbursable activity is, and it's  
4 preparing a simple agenda. So the -- so the activity is  
5 preparing the agenda item.

6 CHAIRPERSON PORINI: Okay. Other questions or  
7 comments?

8 (No response.)

9 CHAIRPERSON PORINI: Do I have a motion?

10 MS. STEINMEIER: Yes.

11 CHAIRPERSON PORINI: Ms. Steinmeier.

12 MS. STEINMEIER: I'd like to move Option Two, the  
13 staff's recommendation.

14 CHAIRPERSON PORINI: All right. I have a motion.  
15 Is there a second?

16 MR. LAZAR: Second.

17 CHAIRPERSON PORINI: There's a motion and a  
18 second.

19 Any further discussion?

20 (No response.)

21 CHAIRPERSON PORINI: May I have roll call.

22 MS. HIGASHI: Mr. Sherwood?

23 CHAIRPERSON PORINI: Do you want to -- go on with  
24 the action.

25 MS. HIGASHI: Ms. Steinmeier?

1 MS. STEINMEIER: Aye.

2 MS. HIGASHI: Ms. Williams?

3 MS. WILLIAMS: No.

4 MS. HIGASHI: Mr. Harrigan?

5 MR. HARRIGAN: Aye.

6 MS. HIGASHI: Mr. Lazar?

7 MR. LAZAR: Aye.

8 MS. HIGASHI: Mr. Sherwood?

9 MR. SHERWOOD: Aye.

10 MS. HIGASHI: Ms. Porini?

11 CHAIRPERSON PORINI: No.

12 MS. HIGASHI: Motion carries.

13 MS. STONE: Thank you very much.

14 CHAIRPERSON PORINI: All right.

15 MS. HIGASHI: That brings us to Item 5, which is

16 the staff report on "Implementation of School Bus Safety II

17 Audit Recommendations," and I just wanted to note that

18 Marianne O'Malley is here, as well, if anyone has any

19 questions regarding the LAO draft proposal that's attached

20 to this agenda item.

21 CHAIRPERSON PORINI: Mr. Harrigan?

22 MR. HARRIGAN: Madam Chair, before we leave the

23 item, there's a white piece of paper here that says

24 Item 4 -- it says it's a sealed proposal for source

25 documentation; is that Item 4?

1 MS. HIGASHI: That was passed out to us by the  
2 State Controller staff.

3 CHAIRPERSON PORINI: Mr. Silva?

4 MR. SILVA: After talking with some of the  
5 claimant's representatives and reviewing the document, I  
6 request that they simply turn it into a liner for the bird  
7 cage. It is not fully developed and so should be  
8 discarded.

9 MR. HARRIGAN: So this is a draft?

10 MR. SILVA: Yes.

11 CHAIRPERSON PORINI: Thanks for the clarification.  
12 Okay. Anything else before we go on here?

13 MS. HIGASHI: No, that's it. Nancy Patton will  
14 present this item.

15 CHAIRPERSON PORINI: All right.

16 MS. PATTON: Good morning.

17 As you know, on March 28, the Bureau of State  
18 Audits released its audit report on School But Safety II.  
19 Before you is our staff report which contains an overview  
20 of the Bureau's recommendations and the initial steps that  
21 we have taken to implement those recommendations.

22 The Commission is required to report to the Bureau  
23 on our efforts to implement the recommendations in 60 days,  
24 six months and one year.

25 The first date the Commission must report to the

1 Bureau is May 27. Prior to that date, the Commission staff  
2 will draft an implementation plan to implement the report's  
3 recommendations. The plan will report to the Commission --  
4 the plan will be reported to the Commission at the next  
5 hearing on May 23, and then the plan will be forwarded to  
6 the Bureau on or before May 27, and we will continue to  
7 apprise the Commission of actions taken to implement the  
8 audit report recommendations as they occur.

9 Thank you.

10 CHAIRPERSON PORINI: LAO, I know you sat there  
11 through our lengthy hearing.

12 Did you want to come forward to make any  
13 comments?

14 MS. BORENSTEIN: Jennifer Borenstein, Legislative  
15 Analyst's Office. Before you, or if you haven't seen a  
16 draft proposal of our recommendation for School Bus Safety  
17 II, essentially what we were attempting to do is  
18 operationalize the findings from the JLAC report. And the  
19 way we were proposing to address those recommendations is  
20 kind of a two-part; in one part, deal with the prior year's  
21 claims, and the vehicle for that we were recommending was  
22 the claims bill, and then the claims bill we were  
23 suggesting to the Legislature that they could direct the  
24 Commission to delete the authority for school districts to  
25 claim for the implementation aspect of this mandate.

1           The JLAC report found that about ninety-three  
2 percent of the costs associated with this mandate had to do  
3 with implementation, and they cited alleged counsel opinion  
4 that said, to a certain extent, school districts had a  
5 preexisting duty for this type of implementation,  
6 specifically for monitoring students, getting on and off  
7 the bus. So what we were recommending is that the  
8 Legislature direct the Commission to narrow the parameters  
9 and guidelines and address the fact that implementation is  
10 not necessarily a new or a higher level of service.

11           In order to modify the parameters and guidelines,  
12 the Legislature would have to appropriate some funding for  
13 the mandate in the claims bill. We also recommended some  
14 options for addressing the budget year of ongoing claims.  
15 In particular, what we suggested is that the Legislature  
16 tie the ongoing funding for the School Bus Safety II  
17 mandate to the Home-to-School Transportation Categorical  
18 Program, and, in this way, school districts would receive a  
19 more dependable stream of funding.

20           So there would be ongoing costs, about seven  
21 percent that's left once the Commission would have narrowed  
22 the parameters and guidelines, and what we would recommend  
23 is linking that to the Home-to-School Transportation  
24 Categorical Program and save all of that funding. Then  
25 the districts can use that as a reserve to meet the cost of

1 complying with the ongoing mandate requirements.

2           We would recommend to the Legislature, and we did  
3 so before the subcommittee, that about up to ten million  
4 would be the ongoing costs of this mandate and that that  
5 could be distributed to districts based on a per ADA or per  
6 pupil mile distribution methodology, whatever was a better,  
7 accurate description of true cost.

8           And part of the reason why I made that description  
9 is that the JLAC report found that true cost necessarily  
10 wasn't reflected in the claims that they looked at when  
11 they reviewed the School Bus Safety II claims. They found  
12 that most of the claims really were determined -- the cost  
13 of those claims were determined by who the claimant's  
14 consults were, so that it didn't necessarily correspond to  
15 what costs were being incurred but the approach that the  
16 claimant's consultants took. So, by allowing the  
17 Legislature or recommending to distribute those funds in a  
18 different manner, we think we're going to accurately  
19 provide reimbursement to districts.

20           I'd be happy to answer any questions.

21           CHAIRPERSON PORINI: Questions from members with  
22 regard to the report?

23           (No response.)

24           CHAIRPERSON PORINI: Okay. Thank you very much.

25           Questions for staff with regard to our activities

1 for compliance with the report?

2 (No response.)

3 CHAIRPERSON PORINI: We'll wait to get the report  
4 on the 23rd to submit on the 27th. I appreciate the fact  
5 that our staff has already done several things, including  
6 training, for legislative committee staff, so thank you.

7 MS. BORENSTEIN: Thank you.

8 MS. HIGASHI: This brings us to Item 6. Item 6 is  
9 Executive Director's Report. Briefly, there is a summary  
10 of workload. In terms of the Commission's budget, I'd just  
11 like to report that we had one budget hearing this week,  
12 Committee staff on the assembly has no issues with our  
13 budget; however, connected with our budget, is a  
14 recommendation made by the Daniel's (phonetic) office  
15 regarding the appropriation on the POBAR mandate and the  
16 recommendation of JLAC doing an audit of that claim, as  
17 well.

18 The Local Government Claims Bill, as you know,  
19 still has not been introduced. The best guesstimate of all  
20 staff is this won't happen until after they've been  
21 revised, certainly, and we'll have a better idea of where  
22 we are.

23 The Senate will be considering the Commission's  
24 budget next week. We have a prehearing with staff, so  
25 we'll be meeting with the budget committee staff on that.



1 So far, no issues have been identified thus far.

2           The Education Trailer Bill, AB 2995, which is  
3 being carried by the Committee on budget, is proceeding.  
4 Originally, it contained suspensions of a number of  
5 education mandates that had been proposed for suspension in  
6 the Governor's budget. This list continues to be trimmed  
7 down, so we're not sure how it's going to finally end up.

8           Regarding our future agendas and hearings, for the  
9 May agenda, we have two test claims. We also have a  
10 request for reconsideration and proposed parameters and  
11 guidelines.

12           For the June agenda, I'd like to make one  
13 correction, that is, on the incorrect reduction claim where  
14 we show "Certification of Teacher Evaluator's Demonstrated  
15 Competence," I'd like to take that off the June agenda.  
16 We'll be rescheduling that very soon. And we'll work --  
17 we'll work on the revisions regarding the incorrect  
18 reduction claim analysis and put it back, in terms of when  
19 that will be coming back.

20           CHAIRPERSON PORINI: All right.

21           MS. HIGASHI: Are there any questions about my  
22 report?

23           (No response.)

24           CHAIRPERSON PORINI: Okay. The Commission is  
25 going to go into closed session, but I'd ask if there are

1 any public comments before we do that?

2 MS. OPIE: Yes.

3 CHAIRPERSON PORINI: Oh, I'm sorry.  
4 Shirley.

5 MS. OPIE: That's all right. I just wanted to  
6 mention that we'll be having a rulemaking workshop this  
7 afternoon at the office at 1:30, which was noticed both  
8 about a month ago and also as part of the agenda for this  
9 month.

10 CHAIRPERSON PORINI: Then I'll -- Alan, did you  
11 want to make a comment?

12 MR. BURDICK: Madam Chair and members of the  
13 Commission, Alan Burdick on behalf California State  
14 Association of Counties.

15 As long as Marianne O'Malley and Jennifer  
16 Borenstein are still here, I think that the mandated reform  
17 option on school districts touches upon the whole mandate  
18 process. I don't think it just deals with schools only, if  
19 many of the suggestions and the directions are going --  
20 and, in some cases, we think the disregard for the  
21 constitution, I think touch on the whole process and not  
22 just that part that relates to schools.

23 And we would just like to suggest, I think, that  
24 the local entities be allowed to participate in the process  
25 and the discussion. We noted in materials relative to the

1 response by the Commission to this that it seemed like they  
2 talked to everybody in the world but local government, and  
3 we would just like to request that local government be  
4 allowed to participate in the process and in any  
5 discussions or recommendations relative to -- that either  
6 came out of the audit that are talking about changing the  
7 processes, because, as I said, when we looked at it, we  
8 don't see that change in the process just for school  
9 districts, we see that change in the process for everybody.

10 CHAIRPERSON PORINI: Okay. Duly noted.

11 Thank you.

12 Any other comments from anyone here?

13 (No response.)

14 CHAIRPERSON PORINI: All right. Then I'll  
15 announce that the Commission will now meet in closed  
16 executive session pursuant to Government Code section  
17 11126(e) to confer with and receive advice from legal  
18 counsel for consideration and action as necessary and  
19 appropriate upon pending litigation listed on the published  
20 notice and agenda and to confer with and receive advice  
21 from legal counsel regarding potential litigation and  
22 Government Code section 11126(a) and 17526. The Commission  
23 will also confer on personnel matters listed on the  
24 published notice and agenda.

25 We will reconvene in open session afterwards.

1 (Whereupon a break was taken.)

2 CHAIRPERSON PORINI: Okay. The Commission met in  
3 closed executive session, pursuant to Government Code  
4 section 11126(e), to confer with and receive advice from  
5 legal counsel for consideration and action as necessary and  
6 appropriate upon pending litigation listed on the published  
7 notice and agenda and potential litigation and Government  
8 Code section 11126(a) and 17526 to confer on personnel  
9 matters listed on the published notice and agenda.

10 With all required reports from the closed session  
11 having been made, if there's no further business, I'll  
12 adjourn

13 Thank you.

14 (Whereupon the meeting was adjourned at 12:50 p.m.)

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# CORRECTION LIST

Instructions: If you are adding to your testimony, print the exact words you want to add. If you are deleting from your testimony, print the exact words you want to delete. Specify with "Add:" or "Delete:" and sign this form.

Hearing: Commission on State Mandates  
Held on: April 25, 2002  
VM&H File No.: 02-199  
Case Title: Commission on State Mandates Hearing

Page	Line	Change:	Add/Delete
9	20	Change "represented" to "presented"	
11	25	Change "19" to "18"	
16	15	Change "a setoff" to "an offset"	
16	16	Delete "staff"	
77	20	Change "heard" to "continued"	
78	10	Delete "which"	
80	17	Change "non-substandard" to "non-substantive"	
92	18	Change "but" to "bus"	
53	16	Delete "taking"	
60	6	Change "varying" to "bearing"	
94	3	Change "alleged counsel" to "a legislative counsel"	
98	16	Change "mandated" to "mandate"	
55	12	Change "local" to "locals"	
96	14	Change "Daniel's" to "LAO's"	

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REPORTER'S CERTIFICATE

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STATE OF CALIFORNIA     )  
COUNTY OF SACRAMENTO   )  
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I, STACEY L. HEFFERNAN, certify that I was the  
official court reporter for the proceedings named herein;  
and that as such reporter, I reported to the best of my  
ability, in shorthand writing, of those proceedings; that  
thereafter caused my shorthand writing to be reduced to  
typewriting, and the pages numbered 1 through 101, herein  
constitute a complete, true and correct record of the  
proceedings:

PRESIDING OFFICER:  ANNETTE PORINI, CHAIRPERSON  
JURISDICTION:  COMMISSION ON STATE MANDATES  
CAUSE:  APRIL 25, 2002 MEETING

IN WITNESS WHEREOF, I have subscribed this  
certificate at Sacramento, California, on this 3rd day of  
May, 2002.

\_\_\_\_\_  
STACEY L. HEFFERNAN, CSR, RPR  
NO. 10750

